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"The law will make you smart": Legal consciousness, rights rhetoric, and African American identity formation in Massachusetts, 1641-1855

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"THE LAW WILL MAKE YOU SMART": LEGAL CONSCIOUSNESS, RIGHTS RHETORIC, AND AFRICAN AMERICAN IDENTITY FORMATION IN MASSACHUSETTS, 1641-1855

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To My Lord Jesus Christ
who has made life's trek vibrant and sweet
through my lovely bride, Patricia Larue,
and my providers of joy, Shannon, Ian and Isaac

and finally, to W. Jeffrey Bolster,
whose encouragement and instruction proved invaluable

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"THE LAW WILL MAKE YOU SMART": LEGAL CONSCIOUSNESS, RIGHTS RHETORIC, AND AFRICAN AMERICAN IDENTITY FORMATION IN MASSACHUSETTS, 1641-1855

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Scott Hancock

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In 1834, one of the informal leaders of Boston's black community rebuked a black defendant in court, declaring "the law will make you smart." This dissertation uncovers how African Americans in Massachusetts did indeed become 'smart' through an ongoing engagement with the law for over two hundred years. While the law could be oppressive, the accessibility of the legal system in Massachusetts enabled black women and men, slave and free, to learn to use the law in efforts to exercise some control over their daily lives. In the deteriorating racial atmosphere during the first half of the nineteenth century, the law remained one of the few arenas in which African Americans had any hope of experiencing the professed egalitarian ideals of the new republic. But the law also instructed African Americans about the value of establishing and maintaining individual legal boundaries between themselves and others, black and white. Through their engagement with the law, African Americans developed a legal consciousness that fostered a sense of themselves as autonomous individuals. After emancipation, that legal consciousness combined with a legal rights ideology to help define what it meant to be African American. That legal rights ideology eventually became an integral part of free black identity when African American leaders, who had expressed little identification with the new nation in the first decades after the American Revolution, began to explicitly identify black men and women as American in response to attempts by some whites to deny African Americans an American identity and citizenship. Black leaders anchored their argument in the Declaration of Independence and the Constitution, and articulated a black identity defined in part by commitment to achieving full citizenship rights. When some black Bostonians balked in that commitment, some black leaders attempted to define them as standing outside of the black community. What it meant to be free, black, and American, remained a complex and at times contentious issue complicated by the evolution of legal consciousness and legal rights ideology.

Introduction

'The Law Will Make You Smart': Legal Consciousness, Rights Rhetoric, and African American Identity Formation in Massachusetts, 1641-1855

In 1834, Governor Riggins, the black 'governor' of Boston, publicly rebuked one of his subordinates, William Patterson, who had fallen to the mercies of the formal legal system. As governor, Riggins occupied an informal position of leadership within the black community that had cultural roots in New England extending back into at least the middle of the eighteenth century. Black governors and kings, traditionally chosen by other slaves and free blacks during Negro Election Day festivals, were often men of exceptional physical strength and stature, but also demonstrated leadership ability befitting their role. In the nineteenth century, however, the prominence of black kings and governors was on the wane; Riggins, in fact, may have been the last in a line of black rulers in Boston. Riggins did not admonish Patterson for any grievous crime. Patterson had simply gone out and bought some unlicensed liquor for a group of African Americans who probably only sought momentary escape from the travails of a sometimes difficult existence. Making up only about five percent of the population, and living in a growing metropolis during an era of diminishing opportunity for and increased antipathy towards free people of color, black Bostonians had good reason to desire escape, even if only temporary. But Patterson's mistake was not buying unlicensed liquor. He had gone outside of the governor's authority and made his purchase on a Sunday -- Riggins reminded him that

"I always gets a *gallon* of good spirit on Saturday night" -- and thus drew the ire of reform-minded city authorities. Riggins washed his hands of Patterson, declaring "the law will make you smart."[1]

Riggins spoke as a man firmly ensconced in black culture and community. He also spoke as a man well aware of the law's utility and power. The law, he knew, could teach through discipline. The legal consequences Patterson might suffer, likely a fine and several days in jail, would hopefully teach him to think more carefully about transgressing the informal authority the governor possessed within the black community. Riggins' declaration also suggests how the law could make African Americans 'smart': by running afoul of the law, Patterson probably learned how to avoid the law, but he also learned something about how the law and the court worked. From experiences like this, he and other black Bostonians learned how to use the law to their advantage as well as when to avoid it. And finally, Riggins' public chastisement of Patterson in court suggests his ability to work within the system. Whether or not Riggins brought the charge against Patterson himself or only testified as a witness is unclear, but his rebuke was surely as much for the court's benefit as for Patterson's. Riggins managed to use the law to cast himself as a black man who supported the law's function of maintaining certain moral codes while reminding his subordinate of the price for overstepping his authority. That recasting of self in relation to the law likely had implications for Riggins' identity; it held the potential to reinforce an image of himself as a black man who could sometimes use white institutions to his advantage.

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[1] *Selections from the Court Reports originally published in the Boston Morning Post, from 1834 to 1837* (Boston: Otis, Broaders, & Co. 1837), 173-174.

This dissertation tells the story of African Americans' engagement with the legal system in Massachusetts from 1641 to 1855 and the consequences of that engagement for African American identity. Because the Massachusetts legal system remained accessible to enslaved and free black women and men, African Americans gained a legal consciousness that shaped black identity formation. This process began in the seventeenth century with ordinary black folk like Zippora, a slave woman acquitted of infanticide in 1663, and the two slave women whose testimony, along with Zippora's own account, contributed to her exoneration. In the South, black testimony would soon be virtually meaningless, but in Massachusetts, black testimony carried legal weight throughout the colonial era. All three black women gained some insight into how the law worked in New England. The seeds of legal consciousness were planted early on.

The evolution of legal consciousness and its role in African American identity formation began soon after Africans came to the shores of Massachusetts. Chapter One sets that engagement within the unique context of Puritan law and documents the ability of enslaved and free black women and men to use the law in Massachusetts. The law, along with other social and cultural interactions, played a role in the transition of an African identity to an African American identity. Chapter Two relates the story of free black Americans like Chloe and Cesar Spear, who bought a house in 1798 with an eye towards improving their financial standing. African Americans began to acquire property in increasing numbers as they attempted to carve out a life for themselves in the young republic. Becoming property owners entailed signing a deed, which established legal boundaries and contributed to an awareness of how to use the law. It also entailed becoming subject to a host of city regulations in a growing early nineteenth century urban area. The Spears

and other African Americans experienced both the benefits of the power of the law and its concomitant restrictions. Chapter Two also carries the story into the nineteenth century and points to the significance of conflict within the black community. With the erosion of the black festivals and their judicial function within the black community, free people of color turned to the law in increasing numbers to manage conflict with white and black Bostonians. That heightened awareness of the law's utility, however, also affected black identity. A likely consequence of their court involvement was the inculcation of how one's rights as a citizen worked on a practical, personal, day-to-day level, and blacks' acceptance of the law's role in ordering their lives. Chapter Three traces African Americans' continued use of the lower courts despite a new court system installed by reform-minded city officials after the incorporation of Boston in 1822. During the antebellum era, a time of increased racial antipathy, African Americans' legal consciousness continued to be informed by a variety of encounters with the law, and they continued to demonstrate a knowledge of and belief in the law's utility. But the increased hostility, combined with black Bostonians' steady court appearances, drew the attention of newspaper reporters, who began to regularly lampoon black litigants. The court reports made black litigants into public performers and contributed to a racist caricature, paralleling the rise of minstrel shows.

The fourth and fifth chapters shift the focus to the impact of black leaders' rights rhetoric on black identity. Sparked largely by the abolition of the slave trade in 1808 and the rise of the colonization movement nearly a decade later, black leaders began explicitly defining free people of color as Americans. Forming a key part of the foundation of their definition was the Declaration of Independence and the Constitution. The legal consciousness

of black leaders manifested itself in a belief that the law, based on the Constitution, was and should be able to protect and prosper African Americans. A legal rights ideology -- the belief that legal rights should reflect and aid the aims and needs of African Americans -- became an integral part of black identity. As Chapter Five demonstrates, an incorporation of fighting for rights within black identity led to acrimonious disputes within the black community. When one group of black Bostonians, who preferred to avoid rather than fight certain kinds of discrimination, decided to try and keep the city's black school open, black integrationists attempted to define them as traitors to their race and country. The black separatists viewed the law as a means of protecting themselves from white interference in their lives, whereas integrationist-minded members of the community wielded their legal consciousness to identify denied rights, and claim them by negating the 'rights' of white and black Bostonians to maintain any separate black school.

The definition and usage of the term 'legal consciousness' in these pages is best encapsulated by Michael Grossberg's description of legal consciousness as a "conscious sense of legal entitlement that encourages individuals and groups to use legal beliefs in disputes about their status, rights, duties, and problems."[2] Unpacking the key terms of Grossberg's definition helps elaborate how the term is used here. First, legal consciousness is *conscious*. It does not operate on some subliminal level, but is an awareness informed through experience, whether that experience is personal, vicarious, or communicated through others. Legal consciousness is an informed, though varied, awareness of the presence of the law's power and function.

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[2] Michael Grossberg, *A Judgment for Solomon: The D'Hauteville Case and Legal Experience in Antebellum America* (Cambridge University Press, 1996), 2.

Second, legal consciousness involves a sense of *legal entitlement.* Legal consciousness entails the sense that individuals or groups should be able to use the law, and, I would add, that to some extent the law exists for their use and their benefit. Individuals or groups who possess a legal consciousness may simultaneously perceive the law as beneficial, deficient, or oppressive, because the law is not monolithic. David Walker expressed this in 1829 when he complained that black property owners were rarely able to pass on their property to their heirs. Whenever a black property owner in Boston died, Walker claimed that the real estate "most generally falls into the hands of some white person."[3] Walker surely understood that the law required that creditors be satisfied, but he apparently believed that whites somehow exploited the situation to deprive black families of their inheritances. In this case, he believed the law to be deficient in its perceived inability to protect black families.

But his protest indicates how he believed the law *should* function. And the experience of many black property owners in Massachusetts belied Walker's protest. African American widows knew they could petition the court for an allowance and a dower, and thus obtain legal protection of a portion of the inheritance from creditors. Abel Barbadoes, a black property owner who died in 1820 in Boston, left his property to his wife, who managed to keep it and eventually passed it on to her children. Peter Howard, a black barber whose shop was frequented by black and white abolitionists and who probably knew Walker, bought property in 1822 on Poplar Street for $1400, lived there for 32 years, and then deeded the property to his sons for $1 and

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[3] David Walker, *David Walker's Appeal, in Four Articles; Together with a Preamble, to the Coloured Citizens of the World, but in particular, and very expressly, to those of the United States of America* (Boston:1829), 10.

"considerations." Even families in danger of losing their property were sometimes able to devise strategies to keep property by exploiting ties within the black community. Thomas and Margaret Revaleon bought property near Boston late in life. In 1831, their house was up for auction due to a tax debt, but the Revaleons managed to have it sold to their son-in-law, Peter Howard. Howard eventually sold the house back to the Robert Revaleon, with the understanding that Robert would take care of Margaret, his mother.[4] The ability of these and other families to use probate laws reinforced the conception of legal entitlement, that the law should be usable and beneficial. When the law was not usable or beneficial -- for there were surely cases that substantiated Walker's criticism -- African Americans did not necessarily perceive the law as useless, but in need of remedy.

Finally, the conscious sense of legal entitlement encourages people *to use legal beliefs*. Legal beliefs are perceptions of how the law does or should work, perceptions based on personal experience, on information passed through the neighborhood, or by watching what happens to others who encounter the law. Legal beliefs may be inaccurate and still be effective, or at least perceived by those employing legal beliefs to be effective. Historian Hendrick Hartog has pointed out that people may sometimes be "objectively wrong...about what public institutions would actually do" in certain situations. Nevertheless, people's "legal assertions and claims are important...not for their truth as law, but for their roles in giving meaning to actions." In 1701 a slave named Adam believed he had a legal basis for

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[4] Carol Bulchalter Stapp, *Afro-Americans in Antebellum Boston: An Analysis of Probate Records* (New York: Garland Publishing, 1993), 3-4; Franklin A Dorman, *Twenty Families of Color in Massachusetts, 1742-1998* (Boston: New England Historic Genealogical Society, 1998), 2-3, 144, 365-366; on Peter Howard and his barber shop, see James Oliver Horton and Lois E. Horton, *Black Bostonians: Family Life and Community Struggle in the Antebellum North* (New York: Holmes and Meier, 1979), 37.

becoming a free man. As Chapter One documents, his belief informed his actions for two years, despite repeated legal setbacks during his pursuit of legal freedom. In 1837, when black Bostonians John and Sophia Robinson kidnapped a young black girl from a white family who they believed intended to sell her back into slavery, their actions were informed by their understanding of the law and by a similar previous case. Though the court informed them their interpretation of the law was wrong, their understanding of the law continued to inform their actions.[5]

On other occasions, legal beliefs can be employed without ever actually formally engaging the law. Legal beliefs include perceptions of how law can work in life outside the legal system as well as in it. Chapter Two documents black Bostonians' zealous use of a justice of the peace court in the early nineteenth century. Many of them probably used the threat of litigation to intimidate irritating neighbors or would-be assailants. The group of black Bostonians who set up the African Humane Society in 1818 made sure to include a by-law that authorized the directors to act as a court with the power to try members suspected of violating any of the Society's rules. African Americans understood the value of infusing certain situations with the authority of the law.

It is these three key concepts working in conjunction that define legal consciousness. It is a cognizance of how the law works, coupled with some expectation of the law as useful and potentially beneficial, and the actual employment of that knowledge and expectation, whether in attempts to gain rights, change one's status, or simply to manage neighborhood conflicts.

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[5] Hendrick Hartog, "Abigail Bailey's Coverture: Law in a Married Woman's Consciousness," in *Law in Everyday Life*, ed. Austin Sarat and Thomas R. Kearns (Ann Arbor: University of Michigan Press, 1993), 69.

To some extent, this differs from how some legal scholars employ the term. Austin Sarat, for instance, calls legal consciousness "a consciousness of power and domination... and a consciousness of resistance." He examines how individuals enmeshed in the modern welfare system attempt to navigate through the terrain of legal rules and practices of bureaucracy. Sarat concludes that the welfare poor experience and understand the law as "grounded in the realities of a society in which race, wealth, and power matter, and law is neither more nor less useful because it does not transcend or transform the world as they know it."[6] African Americans in Massachusetts during the eighteenth and nineteenth centuries were not ignorant of the relevance of race, wealth, and power, but did perceive the law as a tool that could be used to make a difference in their world. The law was one of the few forms of power available to them in an increasingly racist and hostile environment. Black leaders in antebellum Massachusetts and throughout the North demonstrated their belief in the law's utility when they resorted to a rights rhetoric based on the Constitution to assert their legal standing as citizens, and called Americans to live up to the both the laws and spirit of the Constitution.

This divergence in the legal consciousness of free people of color and the people of Sarat's study points to the difficulty of talking about legal consciousness. Sarat's definition of legal consciousness is applicable to the particular group of people in the specific context of the modern welfare bureaucracy. In fact, that is a key part of his argument: Sarat concludes that "legal consciousness is, like law itself, polyvocal, contingent and variable." Even within the welfare poor, legal consciousness varies. Legal scholars

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[6] Austin Sarat, " '...The Law Is All Over': Power, Resistance and the Legal Consciousness of the Welfare Poor," *Yale Journal of Law and the Humanities* 2 (Summer 1990), 344 and 359.

Patricia Ewick and Susan Silbey define legal consciousness as "the ways in which people make sense of law and legal institutions." But, like Sarat, they argue that "consciousness is neither fixed, stable, unitary, nor consistent. Instead, we see legal consciousness as something local, contextual, pluralistic, filled with conflict and contradiction."[7]

But, even considering the variation of legal consciousness, "it has shape and pattern." Part of the shape and pattern, according to Ewick and Silbey, is people's "tactical engagement" with the law. Tactics involve the use of legal beliefs to discern how to resist the institutional power of the law and the courts. Resistance does not typically mean criminal activity; it is the ability to exploit the weak links in the law in order to use it, avoid it, or work within it to achieve one's goals. For instance, when a black man in colonial Massachusetts was arrested for not carrying a lit lantern, he shrewdly pointed out that the town ordinance merely stated that blacks, mulattos, and Indians were required to carry a lantern after dark. Nowhere did it mention that the lantern had to be lit. The selectmen's intention had clearly been to require any black man or woman who was out at night to be easily visible. This black man, however, went out repeatedly at night and managed to escape prosecution because of a weak link in the law. In the antebellum era, black leaders used a rights rhetoric to challenge segregation -- they employed legal beliefs about rights and the Constitution to challenge what they considered to be an unjust law. In both cases, African Americans used the law against itself to achieve their goals.[8]

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[7] Sarat, 375; Patricia Ewick and Susan S. Silbey, "Conformity, Contestation, and Resistance: An Account of Legal Consciousness," *New England Law Review* 26 (Spring, 1992), 734 and 742.

[8] Ewick and Silbey, "Conformity, Contestation, and Resistance," 742; Edward H. Savage, *A Chronological History of the Boston Watch and Police, from 1631 to 1865; Together with the Recollections of a Boston Police Officer, or Boston by Daylight and Gaslight* (Boston: 1865), 33;

Like these examples, much of the legal scholarship dealing with the late twentieth century casts individuals' use of tactics within an adversarial relationship with law. People wield their legal consciousness in a sort of sparring match with the law to achieve certain goals or to protect themselves from the law. Though that kind of relationship characterizes some of the stories in this dissertation, the argument here is that African Americans' engagement with the law was not always adversarial. Because African Americans did not perceive the law as wholly hostile or useless, their conscious sense of legal entitlement encouraged them to use the law in their everyday lives. For them, the law was not always an institution to be resisted. At times, it was an effective ally. And frequently, African Americans found the law useful for regulating their relationships and conflicts with one another.

The calls of historians of pre-Civil War black America to push into the relatively unbroken territory of conflict within African America fueled much of this dissertation. Over a decade ago, Nell Irvin Painter succinctly issued a summons to turn over this new ground by getting historians to

> transcend the weight of stereotype and to bravely investigate black life fully, even when the evidence shows angry, violent, disorderly black people. After all, anger, violence, and disorder are thoroughly human emotions and actions. By sanitizing blacks who lived in the past, historians make them less complete human beings.[9]

A Report of the Record Comissioners of the City of Boston, containing the Selectmen's Minutes from 1769 to April, 1775 (Boston: Rockwell and Churchill, 1893), November 9 1769.

[9] Nell Irvin Painter, "Comment" in *The State of Afro-American History: Past, Present, and Future* (Baton Rouge: Louisiana State Press, 1986), 88. Painter's "Comment" was in response to an essay in *The State of Afro-American History* by Armistead L. Robinson, "The Difference Freedom Made: The Emancipation of Afro-Americans," 51-74.

There is no shame in acknowledging the reality of the ugly sides of the lives of an oppressed people, even when that ugliness grew of their own volition. That individual Africans and African Americans often chose to indulge in petty, selfish, even vicious behavior is no surprise, but perhaps due to a fear of supplying political ideologues with weapons for hurling charges of black inferiority, or a fear of enabling those same ideologues to absolve themselves of individual, corporate, and institutional responsibility, historians have devoted scant attention to black misbehavior except when cast as a form of resistance.

Slighting any aspect of African Americans' history, however, means missing opportunities to explore causes, meaning, and consequences of events in black peoples' lives. It means missing the choices they made. Evelyn Brooks Higginbotham pointed to this when she commented that the powerful rubrics of race and gender not only obscure important distinctions in antebellum gender constructions, but also mask significant differences along class and gender lines *within* black communities. Higginbotham also argued that the term 'race' has superimposed "a 'natural' unity over a plethora of historical, socioeconomic, and ideological differences" among African Americans. Furthermore, race, "as the sign of cultural identity has been neither a coherent or static concept among African Americans."[10] For nineteenth-century African Americans, and twentieth-century historians, the term 'race' typically signified the kind of cultural, social, and experiential common ground upon which slaves and free black women and men had trod. The term also tended to homogenize African Americans and the terrain they traversed. That common ground was frequently uneven, and African

[10] Evelyn Brooks Higginbotham, "African-American Women's History and the Metalanguage of Race," *Signs* 17 (Winter 1992), 270.

Americans often walked different and sometimes diverging paths. This dissertation tracks some of those paths and how they helped outline black identity in the north.

Other scholars, including Gary Nash, James Oliver Horton and Lois E. Horton, Shane White, and Clarence Walker, along with Painter and Higginbotham, have all called for more scholarship that unpacks the meaning of fractures in black communities.[11] Few have answered the call. This dissertation uses those fractures as an entry point, and legal actions as an analytical tool, to uncover important elements of individual and corporate identity formation. Africans became African American not only in opposition to white people, but also through countless interactions with one another. Many of those interactions took place in the legal realm.

This dissertation examines how black women and men became African Americans by examining a trajectory of identity formation in one locale, namely Boston, from the seventeenth century to the eve of the Civil War. How and why northern slaves and their descendants eventually formed an identity defined by national boundaries has been insufficiently explored. Many African Americans were attracted to the potential of the Revolution. There was a disjunction, however, between the promise of the Revolution and the life experiences of black people: black folks knew that many whites viewed them in a less than favorable light, and it is doubtful that all black women and men assumed that white prejudices would easily dissipate in

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[11] James Oliver Horton, *Free People of Color: Inside the African American Community* (Washington: Smithsonian Institution Press, 1993); Gary Nash, *Forging Freedom: The Formation of Philadelphia's Black Community, 1720-1840* (Cambridge: Harvard University Press, 1988); Clarence Walker, *Deromanticizing Black History: Critical Essays and Reappraisals* (Knoxville: University of Tennessee Press, 1991); Shane White, *Somewhat More Independent; The End of Slavery in New York City, 1770-1810* (Athens: University of Georgia Press, 1991).

revolutionary fervor. The vestiges of an African worldview that taught Africans about life's uncertainties, combined with their own experience of white (and black) duplicity, would have reminded them that things are often not what they seem. The assumption, then, that slaves and ex-slaves accepted the Revolutionary rhetoric at face value and subsequently identified themselves with a new country that had been the site of their exploitation for over a century needs to be interrogated on two counts: first, by examining what processes may have been at work to facilitate black people's accepting membership in this new country; and second, by questioning if the process was complete at the establishment of the United States of America.

On the first count, this dissertation explores how engagement with a central social institution, the law, contributed to African Americans exchanging an identity forged in slavery for an identity forged in freedom. William Piersen has demonstrated how New England slaves' incorporation into white families exposed them to 'Yankee' habits of mind and work, which helped shaped eighteenth-century Africans into African Americans.[12] I argue that interacting with the law in a variety of forums for over a hundred years before the Revolution was also an integral part of shaping an identity that facilitated enslaved and free blacks accepting a conception of themselves as African and American.

On the second count, this dissertation argues that after emancipation in Massachusetts during the 1780s, African Americans' engagement with the law accelerated from that point and throughout the Early Republic era. Heightened interaction with the law among black peoples of all ranks thus continued to shape black identity in the new nation. African American

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[12] William D. Piersen, *Black Yankees: The Development of an Afro-American Subculture in eighteenth Century New England* (Amherst: University of Massachusetts Press, 1988).

identity was not a *fait accompli* after emancipation, but an ongoing process of negotiation and contestation between black and white peoples, between black peoples and social institutions, and among African Americans themselves as they frequently wielded the law and notions about the law against one another as well as white citizens.

A host of cross-cultural influences shaped African American identity. Ira Berlin, Mechal Sobel, and William Piersen and others have revealed a good deal of the eighteenth-century process of transformation through labor, culture, and social exchanges; Albert Raboteau, Jon Butler, Betty Wood and Sylvia Frey have done likewise in the area of religion.[13] This study complements that historiography by tracing black interaction with a pervasive and central institution of colonial and American society, the law, and how that interaction shaped African American identity.

The law remained one arena in which African Americans in Massachusetts stood some chance of contesting with whites on a relatively level playing field and an arena that remained accessible. This made emotional and mental investment in the legal system all the more attractive. The law came to play an important role as African Americans turned to the legal system for redress when other avenues were growing more restricted. Economic advancement was difficult, political advancement nearly impossible, but legal success was realistic. Black Bostonians knew this from

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[13] Ira Berlin, *Many Thousands Gone: The First Two Centuries of Slavery in North America* (Cambridge, Massachusetts: The Belknap Press, 1998); Mechal Sobel, *The World They Made Together: Black and White Values in Eighteenth-Century Virginia* (Princeton: Princeton University Press, 1987); Piersen, *Black Yankees;* Syliva R. Frey and Betty Wood, *Come Shouting to Zion: African American Protestantism in the American South and British Caribbean to 1830* (Chapel Hill: University of North Carolina Press, 1998); Jon Butler, *Awash in a Sea of Faith: Christianizing the American People* (Cambridge: Harvard University Press, 1990); Albert Raboteau, *Slave Religion: The "Invisible Institution" in the Antebellum South* (New York: Oxford University Press, 1978).

personal experiences of having their testimony matter in court, signing deeds, having wills validated, using justice of the peace courts, and succeeding in appeals to higher courts. In short, the law made a real difference in their lives for nearly two hundred years.[14]

This argument contributes a historical perspective to an ongoing debate in another discipline. Within the law and society field, critical legal studies scholars have raised intriguing questions challenging the notion that rights and a rights discourse are effective tools for weakening white hegemony. These scholars argue that rights talk merely stifles challenge. In response, critical race theorists, while acknowledging the potential that a rights discourse can be muted, have argued that legal consciousness and rights do matter in a variety of ways and can indeed be wielded to mount effective challenges. After examining the historical evidence of African Americans' ability to frequently "harness the power of the law," this dissertation comes down on the side of the critical race theorists.[15]

This dissertation speaks to two related areas in the law and society field. The first involves the degree to which litigants' court experience reinforces or sustains hegemony. Douglas Hay and E. P. Thompson have argued for an understanding of law as an ideology wielded to maintain hegemony. But

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[14] Gary Nash and Shane White both document the worsening conditions for northern African Americans during the Early Republic era. See Gary Nash, *Forging Freedom;* and Shane White, *Somewhat More Independent;* and " 'It Was a Proud Day': African Americans, Festivals, and Parades in the North, 1741 - 1834," *Journal of American History* 81 (June 1984) 13-50.

[15] For two seminal articles outlining critical race theory, see Patricia J. Williams, "Alchemical Notes: Reconstructing Ideals from Deconstructed Rights," *Harvard Civil Rights-Civil Liberties Law Review* 22 (Spring 1987) 401-433; and Kimberle Williams Crenshaw, "Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law," *Harvard Law Review* 101 (May 1988) 1331-1382. The phrase "harness the power of the law" is taken from Sally Engle Merry, *Getting Justice and Getting Even: Legal Consciousness among Working-class Americans* (Chicago: University of Chicago Press, 1990), 180.

Thompson, and to a lesser extent Hay, note that the law was often contested ground between the ruled and the rulers. Thompson sees the law as an arena of conflict, in which the ruling class usually has the upper hand, but in order to maintain an advantage they have to ascribe to the law a certain amount of real justice and impartiality. This in turn limits the power of ruling classes and to some extent protects the common man. Imbuing the law with some real justice can even provide a means to attack hegemony - though it also can stifle rebellion. Instrumentally, the law is used by the ruling class and thereby serves existing class relations; ideologically, the law transcends class relations and possesses at least the potential to have a real impact on social relations. The dominant groups continually strive to minimize that potential, while subordinate groups persistently work at maximizing that potential.[16]

Radical challenges can be muted through transmission of the norms of social control articulated by the courts. Marc Galanter has argued that litigants 'carry' back the values and norms of the legal culture to their communities as they use it to gain leverage over their neighborhood antagonists or merely through relating what happened to them in court. Sally Engle Merry and others have complicated this picture of hegemonic dominance by arguing that by making the court accessible for ordinary folk to litigate grievances, the law cannot hide all the cracks in the armor: litigants learn how to manipulate the system to their own advantage, they learn where the law breaks down, and they learn the limits of the courts' reach. But they do absorb and become subject in varying degrees to the social control mechanisms of the court. Merry sees "a continuing struggle" between

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[16] Douglas Hay, "Property, Authority, and the Criminal Law" in *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (New York: Pantheon Books, 1975), 3-64; E. P. Thompson, *Whigs and Hunters: The Origin of the Black Act* (New York, Pantheon Books, 1975).

subordinate groups seeking to "harness the power of the law" and the power of the law to reinforce hegemony. My argument aligns with Merry's. African Americans were clearly a subordinate group, but were able to 'harness the power of the law'.[17] Doing so meant gaining some control over their lives while simultaneously sacrificing a kind of cultural autonomy that existed to varying degrees under slavery. It also meant that black identity would be informed by the law, which would influence the language and method of challenges to society's oppression of black America.

Rights rhetoric became a primary language for challenging oppression. Hendrick Hartog points out that the development of rights consciousness potentially limits the effectiveness or range of challenges to accepted conventions. The critical legal studies movement believes that the term 'rights' effectively limits the challenges of subordinate groups, frequently because in the American context of liberal individualism rights stresses individual rights at the expense of group rights and needs. Some in the CLS school argue that a 'rights' discourse should be discarded and the discourse should instead be governed by needs. By conceptualizing their challenges in the acceptable language of 'rights', the potential of fundamental change that might threaten existing relations of power has been safely channeled into a discourse about constitutional rights.[18]

The evolution of legal consciousness and the incorporation of a legal rights ideology that stressed individual rights into black identity may have

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[17] Marc Galanter, "The Radiating Effects of the Courts" in *Empirical Theories about Courts*, ed. Keith O. Boyum and Lynn Mather (New York: Longman, 1983), 117-142; Sally Engle Merry, *Getting Justice and Getting Even*, 180.

[18] See Hendrick Hartog, "The Constitution of Aspiration and 'The Rights That Belong to Us All'" *Journal of American History* 74 (December 1987), 1013-1034; Leon Fink, "Labor, Liberty, and the Law: Trade Unionism and the Problem of the American Constitutional Order," *Journal of American History* 74 (December 1987), 904-925.

indeed eventually limited black challenges by undermining the possibility of constructing legal challenges based on group rights and needs. But legal consciousness and legal rights ideology also empowered black citizens. This type of trade-off in the experience of African Americans in Massachusetts suggests further ambiguity within black identity and experience. But the historical evidence indicates that having, claiming, and using rights had tangible and intangible meaning in the lives of black Americans; the confidence that the constable could be called and the court used to punish or remove neighborhood antagonists cannot be easily dismissed as hegemonic control.[19] Through the law, many free blacks learned that at times, some of the articulated goals of a democratic and egalitarian republic could actually be realized. That confidence also meant absorbing concepts and ideals that helped shaped black identity, at times producing conflict with the black community. African Americans did not then, and do not now, always agree on how the law could 'make you smart.'

[19] I am borrowing here from Patricia J. Williams' critique of the CLS school. See Williams, "Alchemical Notes."

Chapter One

Becoming African American: Building Boundaries of Self, 1641-1783

The story of slavery's legal end in Massachusetts frequently begins in 1781 with the rather well-known tale of Quock Walker's lawsuit against Nathaniel Jennison, who claimed to be Walker's owner and who resorted to violence in an attempt to drag Walker back into bondage. The few historians who have bothered to pay attention to what prompted Walker's decision to use the court instead of resorting to other alternatives -- he could have submitted, retaliated, or run off -- have surmised that Walker was likely instructed by whites motivated either by sympathy for Walker or by their own private feuds with Jennison.[20] Little consideration has been given to the possibility that Walker needed no prompting or instruction on available legal options. It is entirely likely that Walker not only knew he had legal recourse against a white man, but that he knew exactly what court to go to, when the court met, and how to go about getting justice. While he may have had assistance from whites at the outset, as he did later in what turned out to be a drawn-out court battle, there is no reason to suppose that Walker was ignorant of the legal processes; in fact, his actions are remarkably consistent

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[20] See John D. Cushing, "The Cushing Court and the Abolition of Slavery in Massachusetts: More Notes on the 'Quock Walker Case,'" *American Journal of Legal History* 5 (1961), 118-144. There has been some debate on whether this case was solely responsible for abolition in Massachusetts; see Arthur Zilversmit, "Quok Walker, Mumbet, and the Abolition of Slavery in Massachusetts," *William and Mary Quarterly* 25 (1968), 614-624; and Elaine MacEacheren, "Emancipation of Slavery in Massachusetts: A Reexamination 1770-1790," *Journal of Negro History* 55 (October 1970), 289-306. Moreover, while the Walker case did in some respects represent a culmination of several legal decisions resulting in abolition, sporadic cases of enslavement continued for a few years after the resolution of this case. See William E. Nelson, *Americanization of the Common Law: The Impact of Legal Change on Massachusetts Society, 1760-1830* (Cambridge: Harvard University Press, 1975), 102.

with the Body of Liberties of 1641 that instructed servants to seek refuge from "the Tiranny and crueltie of their masters" by going to a freeman neighbor and ensuring that "due notice thereof be speedily given" to a magistrate as well as the master. These instructions were repeated in the general laws of the colony in 1672 and reiterated in a widely circulated catechism in 1726. Walker was only one of many slaves during the course of the century who exercised the ability to appeal to neighbors and, more importantly, the law.[21] While other historians have documented that black New Englanders had been actively engaged in the courts for over one hundred years by the time Walker pressed his case, none have considered how this ongoing engagement with the law shaped identity as Africans, and later African Americans, moved from slavery to freedom.

During the seventeenth century, a tension existed between Puritan faith that demanded legal recognition of persons created in the image of God, and Puritan practice of protecting property and using bound labor. First and second generation Africans in New England found opportunity to exploit that tension. Other historians have documented the latitude and apparent impartiality of Massachusetts courts when dealing with free and enslaved blacks, but no consideration has been given to what this meant *to Africans* as

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[21] *Collections of the Massachusetts Historical Society,* v.8, 3rd series (Boston: Charles C. Little and James Brown, 1843), 230. This volume reprinted the 1641 Body of Liberties in their entirety on pages 218-237. The Body of Liberties were recategorized, expanded, and in some cases ammended in *The General Laws and Liberties of the Massachusetts Colony* (Cambridge, 1672), reprinted in *The Colonial Laws of Massachusetts* (Boston: 1887). The law referred to here is on p. 105 of this reprint. This law was again recommended as the appropriate course of action for slaves in Samuel Willard's *A Compleat Body of Divinity in Two Hundred and Fifty Expository Lectures on the Assembly's Shorter Catechism...* (Boston: 1726), 616-17, sermon #179 (the pagination in Willard's volume was repeated; this reference is the second set of pages so numbered). The Body of Liberties and Willard were no doubt relying on an interpretation of Deuteronomy 23:15-16, which stipulated that Israelites "shall not hand over to his master a slave who has escaped fro his master to you. He shall live with you in your midst, in the place which he shall choose in one of your towns where it pleases him; you shall not mistreat him."

they transitioned into New England society and culture. Due in part to the unique combination of the law's ambiguity regarding the legal status of slaves, and black New Englanders' familiarity with the day-to-day business of their owners, including whites' court activities, some slaves and free blacks managed to construct legal boundaries between themselves and their owners.[22] Mundane legal acts such as committing one's name to a property deed, as Sebastian Kaine did in 1656, fixed a claim to land that whites could not legally violate.[23] While anthropologist James Clifford has pointed out that identity is not merely a matter of maintaining boundaries but is also "a nexus of relations and transactions actively engaging a subject,"[24] for first and second generation Africans, establishing boundaries was a critical stage during these early years of slavery. The law helped slaves and free blacks perform two vital functions of identity formation: maintaining boundaries, and actively engaging in a "nexus of relations and transactions" with white and black New Englanders. That the law was an integral part of negotiating identity also meant that a central institution of New England society played a role in the construction of an African American identity, as slaves had notions of self influenced by English definitions of the legal person.

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[22] On the apparent impartiality of the law, see Robert C. Twombly and Robert H. Moore, "Black Puritan: The Negro in Seventh-Century Massachusetts," *William and Mary Quarterly* 24 (April 1967), 224- 242; and Lorenzo Greene, *The Negro in Colonial New England 1620-1776* (New York: Columbia University Press, 1942); also see Cornelia Dayton, *Women Before the Bar: Gender, Law, and Society in Connecticut, 1639-1789* (Chapel Hill: University of North Carolina Press, 1995). On family slavery, see William D. Piersen, *Black Yankees:The Development of an Afro-American Subculture in Eighteenth-Century New England* (Amherst: University of Massachusetts Press, 1988), 25-36.

[23] Sebastian Kaine appears in the Thwing Database at the Massachusetts Historical Society. This database, an ongoing project at the MHS, contains references and notes on over 4000 African Americans in Boston who appear in a variety of records, primarily before 1800. While some references are very brief, many contain a significant amount of information.

[24] James Clifford, *The Predicament of Culture: Twentieth-Century Ethnography, Literature and Art*, (Cambridge: Harvard University Press, 1988), 344.

This chapter aims to uncover the experience of Africans and their descendants as they engaged the legal system in colonial Massachusetts, and how that experience contributed to the gradual formation of an African American identity. Because the few sources are rarely in the words or from the perspective of black New Englanders, however, this chapter interprets their actions and serves in some respects to lay the groundwork for succeeding chapters by establishing that black interaction with the law and Africans' knowledge of the workings of the legal system was far from atypical. Their experience with the law proved to be an integral part of the ongoing process of negotiating an African American identity well into the nineteenth century.

Determining Africans' place in New England society was not simply a matter of whites imposing laws that defined black men and women as property for life. The legal relationships of power between colonists and enslaved Africans were murky for much of the seventeenth century, in large part because, unlike the rest of the New World, there was no slave law from the mother country to transfer to the colonies. Historian Alan Watson has noted that in the British colonies the law in general was made by colonial courts and legislatures and not simply taken straight from England. This was especially true regarding slave law; because England had no slave law, colonial courts did not even have a standard from the home country to use as a referent. By contrast, in the Spanish colonies the power of making law resided in Spain. But in British North America, as the institution of slavery evolved, slave law "came into being bit by bit, either by statute or by judicial precedent, sometimes based on what people did."[25] Though African slaves

came to Massachusetts during the first generation of settlers, the law dealt with them by name only sporadically. In 1652, the General Court stipulated "that all Scotsmen, Negeres and Indians" had to attend militia training along with the English, but modified that order four years later with a racial exclusion: Indians and blacks, whether free or slave, were barred from training or carrying arms. In 1680, the General Court prevented any vessels from sailing from the colony with any "Passengers, or any Servant or Negro" unless the Governor had granted permission.[26]

Nevertheless, in the seventeenth century and the first half of the eighteenth century, when racial ideologies and concepts defining 'race' in British North America were still nebulous and fluid, the law, as much as any other mechanism, gradually came to play an important role in defining for the white and black peoples of New England how Africans would fit into society.[27] But because Africans were an unplanned part of the errand into the wilderness, and because they were few in number, seventeenth-century law in Massachusetts was largely silent regarding the black presence. When the General Court compiled the Body of Liberties in 1641 and stated that "There shall never be any bond slaverie, villinage or Captivitie amongst us," they added a significant qualifier to the absolute term "never" by permitting slavery in cases of "lawfull Captives taken in just warres, and such strangers

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[25] Alan Watson, *Slave Law in the Americas* (Athens: University of Georgia Press, 1989), 64; Jonathan A. Bush, "The British Constitution and the Creation of American Slavery," in *Slavery and the Law*, ed. Paul Finkelman (Madison: Madison House, 1997), 382.

[26] George H. Moore, *Notes on the History of Slavery in Massachusetts*, (New York: 1866), 243; *The General Laws and Liberties*, 281.

[27] Concerning the ongoing construction of race in seventeenth-century British America, see Winthrop Jordan, *White over Black, American Attitudes Toward the Negro, 1550-1812* (New York: W.W. Norton & Co., 1968), 3-98; T.H. Breen and Stephen Innes, *"Myne Owne Ground": Race and Freedom on Virginia's Eastern Shore, 1640-1676* (New York: Oxford University Press, 1980); Ira Berlin, *Many Thousands Gone: The First Two Centuries of Slavery in North America* (Cambridge: The Belknap Press, 1998).

as willingly selle themselves or are sold to us."[28] The apparent contradiction is understandable when the context within which the Court articulated this conditional 'antislavery' law is taken into account. Three types of slavery existed in early Puritan New England: Indians captured in what the colony defined as 'just wars', such as the Pequot War in 1637 or other wars considered to be in self-defense or in defense of allies that had been authorized by the General Court;[29] African slaves; and white servants who had been convicted of a crime and sentenced to slavery. But white servants either had time limits placed on their slavery, or had their sentences terminated by the court. In 1638 William Androws attacked his master and was "delivered up a slave to whom the court shall appoint"; less than a year later he was released "upon his good carriage" and the promise to pay restitution to his victim. In 1640 Thomas Savory was whipped for theft, and sentenced to work as a slave until he paid double the value of what he stole.[30] The targets of this early 'antislavery' law were freemen like Androws and Savory.[31]

Puritan lawmakers relied heavily, though not exclusively, on Old Testament precedent to construct a slave law that permitted slavery, but

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[28] *Collections of the Massachusetts Historical Society,* 231. Repeated in *The General Laws and Liberties* , 10.

[29] *Collections of the Massachusetts Historical Society,* 217. Repeated in *The General Laws and Liberties* , 73. I conclude this as the Puritan's view of 'just war' because this statute stated that "no man shall be compelled" to serve in "offensive" wars, while they could be compelled to serve in defensive wars. Presumably, defensive wars were always considered just, whereas offensive wars, in the English experience were frequently unjust. Therefore, captives taken in offensive wars were not seen as people who had in some manner forfieted their liberty, as had those who attacked the colony or 'willingly' sold themselves.

[30] *Judicial Cases concerning American Slavery and the Negro,* ed. Helen Tunnicliff Catterall (Washington: The Carnegie Institution of Washington: 1936), vol. 4, 469.

[31] George H. Moore made this argument over one hundred years ago; see Moore, *Notes on the History of Slavery in Massachusetts,* 15-19.

ensured that slavery of fellow countrymen for debt, criminal offenses, or any other reason would remain beyond the pale. Old Testament law permitted Israelites to "acquire male and female slaves from the pagan nations" around Israel, and stipulated that "if a countryman of yours becomes so poor with regard to you that he sells himself to you, you shall not subject him to a slave's service. He shall be with you as a hired man" and be released to go back to his own property in the year of jubilee. Other passages similarly instructed Israelites to free kinsmen in the seventh year of their service.[32] The "Liberties of Servants" section within the 1641 Body of Liberties echoed a similar principle by forbidding masters to send away faithful servants empty-handed after seven years service. But the laws forbidding bond slavery, with the significant exceptions noted above, were in a succeeding section on the "Liberties of Forreiners and Strangers."[33] Africans were neither kinsmen nor countrymen.

Though the lawmakers did not mention Africans, they were undoubtedly aware of the foothold black slavery had acquired in neighboring colonies as well as their own. The phrase mentioning "strangers" who were "sold to us" was likely written with African slaves in mind. Thus, this first 'antislavery' law was actually New England's first law codifying slavery -- the final phrase made this clear, noting that "this exempts none from servitude, who shall be judged thereto by Authority." This in effect gave the General Court or any governing body the authority to make the final determination on whether Africans or others fit within the permitted exceptions to the 'antislavery' law. This law actually codified a racially-based slavery--black

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[32] See Leviticus 26:44 and Deuteronomy 15:12. Quote taken from the New American Standard Bible.

[33] *Collections of the Massachusetts Historical Society,* 230-231.

women and men were the only people who as a group fit the description of "strangers" being "sold to us" and were not captives of just wars.

Recently, one researcher has stated that black men and women "according to law, were not considered special targets for slavery because of their race. White, black, and red captives of wars were all considered to be fair game." Evidence for this argument is Robert Keayne's 1652 purchase of a Scotsman who was one of 270 captured at the battle of Dunbar and sold in Boston as slaves, and the return of a group of Africans to Africa who had been judged as not captured in the course of a war, but captured and shipped to Boston aboard the *Rainbowe* solely for the purpose of being sold as slaves.[34] But most Africans came to New England through the Carribean, so Puritan authorities could ignore the original cause of ensiavement. The Africans on board the *Rainbowe* were an exception. And white 'slaves' such as Keayne's Scotsman could expect freedom after a period of time, as general practice dictated. As Alan Watson points out, in societies like New England, slave law formed largely by common practice. The 1641 Body of Liberties made it difficult to place whites into bond-slavery, and the common practice, as demonstrated by court decisions that placed time limits on or freed convicts sentenced to enslavement, established a pattern that virtually ruled out white slavery. Meanwhile, the Body of Liberties left a loophole for the bond slavery of Africans. Combined with the 1656 law banning black and Indian men from the militia, Puritan law even within the first two generations, was slowly but surely constructing a racially-based slave law.

While the Old Testament provided a framework for lawmaking, Puritans did not bind themselves too closely by divine pronouncements. God

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[34] Melinde Lutz Sanborn, "Angola and Elizabeth: An African Family in the Massachusetts Bay Colony," *New England Quarterly* 72 (March, 1999), 122.

had instructed the Israelites to not only provide refuge for escaped slaves, but to go further by allowing the escaped slave to "live with you in your midst, in the place which he shall choose in one of your towns where it pleases him."[35] The Puritans, however, modified this freedom by injecting the legal process that Quock Walker utilized. Slaves could flee to a neighbor who was obligated to provide refuge, but either the neighbor or the slave was obligated to contact the judicial establishment in order to settle the matter. No doubt many judges returned runaway slaves to their masters. Instead of permitting runaway slaves to live where they pleased according to Old Testament law, Puritan lawmakers built a mechanism into the law that enabled masters to procure their slaves' return.

And yet this statute can be read as both safeguarding slaveowners' property, and as acknowledging slaves' humanity and personhood. Though some southern slave law also internalized this ambivalent tension, the dominant interpretation in the south leaned heavily towards seeing slaves as property. When slaves were recognized as persons, it was frequently for the purpose of continued maintenance of the peculiar institution. Southern colonies tacitly acknowledged slaves' humanity in a backhanded legal fashion by noting that slaves were not on the same level as inanimate property or animals, since neither of those kinds of property could be charged with a crime.[36] But Massachusetts law recognized the personhood of slaves in a positive manner by declaring that slaves "shall have the liberties and Christian usage which the Law of God established in Israel doth morally

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[35] Deuteronomy 23:15-16, New American Standard Bible.

[36] See William W. Fisher III, "Ideology and Imagery in the Law of Slavery," in *Slavery and the Law*, 44-45; Carl Degler, *Neither Black nor White: Slavery and Race Relations in Brazil and the United States* (New York: MacMillan, 1971).

require." Lorenzo Greene points out that this Puritan perspective conferred a "dual status" upon slaves as property and persons.[37] Under Puritan law, slaves were not merely property with no legal status as persons. And though this law did not elaborate on what "liberties" slaves might expect, it presumably referred to Old Testament passages such as the one above and Deuteronomy 24:17-18, in which God had admonished the Israelites to remember that they had once been slaves in Egypt, and so not to "pervert justice due an alien." Other passages made clear that slaves were in many respects the equal of their owners: expectations for worship and eligibility for membership within God's covenant with Israel through circumcision were the same for master and slave.[38] Puritan law carried an implicit view of personhood since it was written within the context of an understanding of the Old Testament's view of slaves as persons.

Defining slaves as persons was made explicit in other laws. An expectation of justice before the law was apparently one of the liberties intended by the early slave law. The Body of Liberties declared that

> every man, whether Inhabitant or fforreiner, free or not free shall have libertie to come to any publique Court, Councel, or Towne meeting, and either by speech or writeing to move any lawfull, seasonable, and materiall question, or to present any necessary motion, complaint, petition, Bill or information.[39]

Whether or not Puritan lawmakers envisioned African slaves as being part of the "not free" is unknown; it is possible that the intent may have been simply to ensure that white servants had free access to the courts and other legal

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[37] Greene, *The Negro in Colonial New England*, 167.

[38] See Deuteronomy 12:12-18 and Genesis 17:9-15.

[39] *Collections of the Massachusetts Historical Society*, 218. Repeated in *The General Laws and Liberties* , 90.

forums. But in light of the Old Testament context within which Puritans attempted to build their city on the hill, it is likely that this law was written with both black slaves and white servants in mind. The book of Job made clear that in both a legal and moral sense, slaves possessed full personhood:

> "If I have despised the claim of my male or female slaves when they filed a complaint against me,
> What then could I do when God arises, and when He calls me to account, what will I answer him?
> Did not He who made me in the womb make him, and the same one fashion us in the womb?"[40]

Biblical precedent combined with a lack of fear of slave rebellion or disorder, due to slaves' relatively small numbers, to foster a Puritan slave law that permitted this type of legal space to exist. By contrast, South Carolinians, convinced that Africans, being "of barbarous, wild, savage natures," were "wholly unqualified to be governed by the laws, customs, and practices of this Province" subsequently limited slaves' ability to use the law for prosecution or defense.[41] South Carolina's 1696 Slave Code, and much of southern slave law, interpreted the law as something to be imposed upon slaves by whites in order to protect the increasingly large pool of slave labor and maintain order in societies with growing black populations. William Fisher describes how southern slave law was frequently driven by conflicting images of Africans: the lazy, comical slave, and the murderous savage. In Massachusetts, similar imagery existed but it was mitigated both by biblical injunctions that the

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[40] Job 31:13-15.

[41] Fisher, "Ideology and Imagery in the Law of Slavery," 49. Quote taken from South Carolina's 1696 Slave Code.

Puritans tried to follow, and by the lack of a perceived large-scale threat due to the small proportion of slaves in the population.[42]

Puritan law, then, opened the door for a more thorough black engagement with the legal system than would be possible in many other colonies. Whether coming to court as plaintiffs or defendants, whether appearing before town selectmen or committing their names to legal documents such as wills or property deeds, black men and women came to understand that certain processes were due them despite their low status in Massachusetts society.

This understanding meant black litigants participated fully in legal procedures long before the Revolution. In a recent essay, T. H. Breen argues that "at a critical moment in the development of Western liberal thought, the slaves of Massachusetts brought the testimony of their own lives before a public increasingly unwilling to defend" slavery. Breen questions if abolition in Massachusetts resulted "as a gift of white leaders," those "thoughtful, moral, reflective members of a professional elite" whose "growing abhorrence for slavery" shaped public opinion. He seeks to inject black participation in pushing public opinion towards abolition, and not just through the four well-documented freedom petitions made by Massachusetts slaves in the 1770s. Instead, by focusing primarily on two black men convicted as criminals, Breen examines how the crimes these two men committed "provoked doubt--a defensive reaction--among whites already uneasy about slavery." This chapter demonstrates that the public 'testimony' of black lives had been regularly brought before whites through

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[42] Samuel Sewall's diary, for instance, provides evidence of this imagery, as will be seen below.

confrontations with the law long before the Revolutionary era.[43] Though the intention here is not to focus on changes in white opinion, the evidence both complements and challenges Breen's argument. It complements his argument by documenting the long public record of tension resulting from slaves' expressions of contention against white oppression. While whites had been well aware of this tension, virtually no momentum pushed white public opinion towards abolition until just before the Revolution. This chapter challenges Breen's argument, which points to the 1760s as the beginning of whites' consideration that slavery itself might the problem. The evidence presented here suggests that some whites recognized this long before the Revolutionary era.

African slaves came to Massachusetts early, possibly even before the establishment of the Massachusetts Bay Colony in 1629, and certainly before mid-century. Lorenzo Greene and others have fixed the 1630s as the arrival time of the first Africans, though some anecdotal evidence suggests that at least one white man brought his slaves into the colony before 1630.[44] Due to the Puritan culture, the needs of New England slave-owning families for domestic and farm labor, and the ambiguous legal status of Africans, slaves were commonly incorporated into the family. They lived in the house, shared the same food, and some sat at the same table--or at least in the same

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[43] T.H. Breen, "Making History: The Force of Public Opinion and the Last Years of Slavery in Revolutionary Massachusetts" in *Through a Glass Darkly: Reflections on Personal Identity in Early America*, ed. Ronald Hoffman, Mechal Sobel, and Fredrika J. Teute (Chapel Hill: University of North Carolina Press, 1997), 71, 74.

[44] Greene, *The Negro in Colonial New England*, 16-18; Twombly and Moore, "Black Puritan: The Negro in Seventh-Century Massachusetts," 225; John Daniels, *In Freedom's Birthplace: A Study of the Boston Negroes* (Boston: Houghton Mifflin Company, 1914; reprint, Arno Press and the New York Times, 1969), 1.

room. The familial connection, not simply a means of assuring submission and securing control, was often genuine.[45]

Nonetheless, when it came to assessing taxes in the seventeenth century, Massachusetts slaves were considered property, and not family, along with horses, sheep, and swine, and would be sealed into this category until emancipation after the American Revolution. As in the south, slaves could be legally sold at will by their masters, and could also be sold to settle civil suits or criminal charges brought against themselves or their masters. In 1672 Silvanus Warro admitted to forging a key to his master's box and taking money. While sentencing Warro to 20 strokes of the whip and repayment of the stolen money along with the court and prison fees, the court ordered him to pay "for the maintenance of bastard child he fathered in Roxbury." If he failed to pay the child support, Warro was to be sold. Warro apparently did fail to do so, but his master decided to put the child out as a servant until it was thirty years old. In 1681, Chefalia, a slave to Thomas Walker, was jailed on suspicion of burning down the houses of two white homeowners in Roxbury. Though not yet convicted of a crime, the court decided that Walker had to send Chefalia out of the country--in other words, sell him. The judgment also stated that if this were not done in one month, the court would do it for him, and give Walker whatever was left after deducting court and prison expenses. In 1677, Nicholas threatened his master with a loaded gun and wounded him with a knife; after being "severely whipt with twenty nine Stripes" and paying a fine, he remained in jail until he could be sold out of the country. By contrast, the case following Nicholas' involved a white

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[45] Piersen, *Black Yankees*, 25-36; Joanne Pope Melish, *Disowning Slavery: Gradual Emancipation and "Race" in New England, 1780-1860* (Ithaca: Cornell University Press, 1998), 7-41.

servant who ran away and attacked a constable in the process. He was fined heavily. On the same day, the court fined one white man for wounding another white man "with a quart pot fetching much blood." There are still more cases in which Africans received fines or corporal punishments, as did whites, but with the additional consequence of being sold out of the country. The point is not to highlight potential inconsistencies in the court's sentencing practices. Rather, it is notable that black slaves, unlike white servants, could be sold into permanent bondage, even out of the colony.[46]

In other instances, an accusation of criminal wrongdoing was not necessary for slaves to be taken or sold off. Michael Powell's young slave was confiscated in 1670 through a writ of attachment after it was claimed that Powell had not returned items and money he was supposed to have held in custody. Others slaves were passed to surviving kin through a deceased slaveowner's will. Slaves whose owners died without heirs, or died with substantial unsettled debt, faced the likelihood of being sold by the town along with other real and personal property. This practiced continued well into the eighteenth century; in 1757 slaves Hercules and Sharper were sentenced to be whipped and to repay triple the value of goods they had stolen--a debt amounting to less than one pound. Two months later, with Hercules and Sharper still owing Elizabeth Dabney, widow of the man who had accused them of the theft, the court granted Dabney's request that she "be allow'd to dispose of the sd negros' Life to any of his majesty's subjects to satisfy the

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[46] Warro and Cheffaleer are in the Thwing Database. Many of the African Americans listed in the Thwing Database appear solely due to being listed in a probated will. Nicholas and the other cases are in *Publications of the Colonial Society of Massachusetts, Collections*, v.30 (Boston: The Colonial Society, 1933) 884-890.

sum." In these circumstances, the law and whites clearly viewed slaves as property, and the demands of property superseded those of personhood.[47]

While southern states like South Carolina were developing slave law that in most respects denied Africans' legal personhood--slaves could not litigate civil suits as plaintiffs or defendants, and in criminal cases could only be defendants--in Massachusetts, the law did at times impart a degree of personhood and created space for slaves to situate themselves as beings who could operate within the legal system.[48] Because, as Samuel Willard would preach in 1726, even "the Soul of a Slave is...of as much worth, as the Soul of his Master, having the same noble Faculties and Powers, and being alike Immortal; and being alike Precious to Christ," and because the law was meant to embody God's perspective in earthly society, every person, even black slaves, had to be accorded certain liberties under the law.[49] Slaves could testify in court regardless of the color of the litigants, were able to sue their masters or other whites, make contracts, and could expect to have a trial by jury in criminal cases.

Overlaying these tensions within Puritan law was African slaves' own experiences previous to being imported to New England. Though many New England slaveowners preferred young slaves brought directly from Africa, their choices were often limited to slaves that the more demanding southern and Caribbean markets cast aside. Seventeenth century purchases from the West Indies were common. Mixed in with these less desirable slaves were

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[47] Hercules and Sharper are in the Thwing Database. Account of Powell's slave in Greene, *The Negro in Colonial New England*, 172.

[48] On South Carolina, see Watson, *Slave Law in the Americas*, 71-73.

[49] Samuel Willard, *A Compleat Body of Divinity in Two Hundred and Fifty Expository Lectures on the Assembly's Shorter Catechism*, 616.

creolized Africans who had encountered English law through time spent in ports on the African coast or in the Caribbean. Ira Berlin notes that in the seventeenth-century Caribbean, some slaves attempted to use the courts to gain freedom. Southern slaveowners at times avoided slaves who possessed broader experience because they feared that such slaves would at best contest for personal freedom, and at worst agitate other slaves to do likewise. Encountering Puritan legal procedure was therefore not a completely novel experience for some slaves who had some familiarity with English law in other settings, and even Africans unfamiliar with the legal process may have received some instruction from more cosmopolitan slaves.[50]

Occasionally, slaves employed legal knowledge, whether gained through watching white masters, personal past experience, the experience of other slaves, or combinations of these sources, to exploit what space the law provided to redefine themselves as a free legal being. One remarkable case that began with a contract in 1694 and did not reach a conclusion until 1703 has been noted only in terms of what it meant for the white participants, and only passing reference has been given to its significance for Adam, the slave who initiated legal proceedings against a man who was not only a member of the colonial elite, but also a judge. Throughout this see-saw legal battle, Adam demonstrated not only perserverance, but a shrewd understanding of how to use the law and of the law's advantages. In the end, he managed to

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[50] Piersen, *Black Yankees*, 3-6; Greene, *The Negro in Colonial New England*, 34-38. On creolized Africans, see Berlin, *Many Thousands Gone*, 17-28 and 47-63; and John Thorton, *Africa and Africans in the Making of the Atlantic World, 1400-1800*, second edition, (New York: Cambridge University Press, 1998). Similarly, a good deal of scholarship on the African diaspora documents the long history of opportunties many Africans had to interact with European legal and social institutions; a good overview essay is J. E. Harris, "The African Diaspora in the Old and New Worlds," in UNESCO's *General History of Africa: Africa from the Sixteenth to Eighteenth Century*, ed. B. A. Ogot (Berkeley: University of California Press, 1988), vol . 5, 113-136.

use the law to shape his circumstances, but was himself shaped in turn by the law.

According to a nineteenth-century historian, John Saffin came to Massachusetts around 1645, and after a brief hiatus in Virginia, established himself as a successful merchant in Boston. Part, perhaps most, of his success stemmed from "the clandestine importation of negroes from Guinea." Saffin's life was marked by tragedy; he outlived all eight of his sons and two wives, and in one sorrowful span of two weeks in 1678, he watched helplessly as the smallpox robbed him of two teen-aged sons as well as the "enjoyment of her my Sweet Martha," his wife of twenty years. Nine years later, while burying one son, news of the death of his only remaining son arrived from London. Two months after that, his second wife died. Even by the sometimes austere standards of the seventeenth century, what Saffin described as his "allmost insuportable grief" was surely justified.[51] Perhaps personal tragedies made Saffin a difficult man to deal with--his third marriage was not a happy one and resulted in a separation sometime before his death in 1710. Perhaps he had a tenacious personality regardless; whatever the case, he used every means at his disposal trying to keep one of his slaves in perpetual bondage.

Saffin knew the courts well. He appears repeatedly in court records over a period of thirty years before his slave pursued legal freedom. Saffin came to court frequently as a plaintiff and occasionally as a defendant in civil cases, in addition to appearing as a witness, court official, attorney, and finally, judge. His relationship with the law was at times a bit murky; in 1671

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[51] *Publications of the Colonial Society of Massachusetts, Transactions 1892-94* (Boston, 1895), vol. 1, 86, 362.

he was accused by another freeman of tampering with a jury and a judge, and two years later he was briefly entangled with a wanted man -- though it is not clear of Saffin was knowingly involved.[52] In 1696, the General Assembly assessed him with a small fine for being connected with the denial of a trial by jury to one John Wilkins.[53]

Saffin was also a slaveowner, and one of his slaves, Adam, wanted to be a free man. Little is known about Adam before he appeared in the legal records when he took Judge Saffin to court in pursuit of liberty. He had resided in Bristol County, south of Boston, since at least the early 1680s, and before coming under Saffin's hand had served a minister and later the minister's widow.[54] Adam displayed some legal savvy early on, managing to secure a contract, signed by Saffin and three witnesses, that promised eventual manumission. In 1694, John Saffin, claiming that he was motivated by "meer kindness and for the Encouragement of my negro man Adam," had agreed to "Enfranchise clear and make free" Adam after seven years of service to Thomas Shepherd, one of Saffin's tenants in Bristol. Saffin did attach conditions to the seven year term, requiring that Adam served "chearfully quietly and Industriously...and doe behave and abear himself as an Honest true and faithful Servant."[55]

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[52] *Publications of the Colonial Society of Massachusetts, Collections* (Boston, 1933), vol. 29, 190-91, 348-49.

[53] Suffolk Court Records, vol. 40, 361, 372, 393.

[54] Suffolk Court Files, vol. 59, File # 5941

[55] *Publications of the Colonial Society of Massachusetts, Transactions 1892-94* , vol.1 , 88. Most of the legal documents concerning the Adam v. John Saffin case--court records, depositions, and the 1694 contract between Saffin and Adam--are reprinted in this volume. I have checked these reprints against the original documents and microfilm copies of the originals located at the Massachusetts State Archives, listed as the 'Suffolk County Supreme Judicial Court, Suffolk Court Files and Suffolk Court Records' (hereafter referred to by either 'Suffolk Court Files' or 'Suffolk Court Records'). The reprints in the *Publications of the Colonial Society*

In March of 1701, seven years to the month after the contract between Adam and his master had been entered into the record, Adam was told to leave Boston, meet Saffin in Bristol, where he would be bound over to serve another man. In response, Adam launched a campaign of defiance and established a pattern of behavior that would frustrate and infuriate John Saffin for the next two years. John Saffin later argued that Adam had always been a "Desperate Dangerous Villaine, and of Turbulent humour," possessing a "proud, insolent and domineering spirit"--though for some reason he had seen fit to let Adam work alone in Boston. Here a corrective to the 'family slavery' depiction arises; Adam, regardless of the truth of Saffin's character assassination, spent a good amount of time in Boston alone. According to Saffin, Adam "had nothing to do but to work in the Garden, make Fires and the like, was kindly used, did eat of the same as the English servants." This semi-autonomy made it easier for Adam to defy Saffin's orders. Instead of going to Bristol, Adam "took his Cloaths out of the house by stealth, and went about the Town at his pleasure." Adam made his defiance a public matter.[56]

John Saffin eventually came back to Boston to get Adam. To his chagrin, Adam came to him first "in a sawcy and surly manner" and told Saffin--Saffin the prominent judge, Saffin the successful merchant--that he had to go speak to Judge Samuel Sewall in his Boston residence. There, Saffin, making the acerbic comment that he "obey'd this Negromantick Summons," was confronted with the contract he had made with Adam seven

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volume are accurate, and because of greater of accesibility and legibility, will be referenced here. The *Publications of the Colonial Society* volume is not, however, an exhaustive source for the records of this case. The depositions in Adam's favor (referenced below), for instance, were not included, as Abner C. Goodell, the nineteenth century compiler of these records, was primarily concerned with John Saffin's perspective on his dispute with Samuel Sewall.

[56] *Publications of the Colonial Society of Massachusetts, Transactions 1892-94* , vol. 1 , 104-05.

years previous.[57] Adam had done more than flaunt his rebellion about Boston; he had made preparations for the next volley in his battle with Saffin. It is reasonable to assume that it was Adam who took the contract to Sewall, and rather than run off or wait for Saffin to come to Boston, he likely gave Sewall his version of events when he passed along the legal proof of his emancipation. There is no evidence of any previous relationship between Adam and Samuel Sewall, but somehow Adam knew of Sewall's sympathies--there were other judges in Boston to whom he could have turned. It cannot have been coincidence that he took his case to the judge who felt strongly that the legal and theological justifications of slavery were exceedingly thin. Sewall had published his famous antislavery tract "The Selling of Joseph" less than a year previous,[58] and Adam, no doubt aware of Sewall's antislavery proclivities, counted on his support. Sewall confirmed that trust when, understanding that Adam's entire case rested on one legal document, he initially refused to even permit Saffin to handle the manumission contract.

At this meeting between Sewall and Saffin, a meeting brought about by Adam's hand, the legal battle was joined. The central issue in this see-saw affair was whether Adam fulfilled the terms of the contract by serving out his term "chearfully quietly and Industriously." Adam argued that he had fulfilled the terms adequately; Saffin disagreed strenuously. Sewall, declaring that "Liberty was a thing of great value, even next to life," enjoined Saffin "to stand to it" and honor the contract. Judge Addington, who was also present at this initial meeting, chose a tack probably not to Adam's liking by arguing that "there was much to be allowed to the behaviour of Negroes, who are so

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[57] Ibid., 105.

[58] *The Dairy of Samuel Sewall*, Harvey Wish, ed., (New York: G.P. Putnam's Sons, 1967). Sewall's tract is reprinted in this edition of his diary following the entry for June 19 1700.

ignorant, rude and brutish, and therefore to be considered as Negroes." This judge, seeking to interpret the contract in a fashion that would grant Adam his freedom, attempted to broaden the stipulation of faithful obedience to allow for what he considered the limitations of black character. Saffin would have none of it; "small faults," he said, "I should have winkt at them, but he having behaved himself so diametrically contrary" to the terms of the contract ruled out any possibility of freedom.[59]

Having failed to resolve the dispute through an informal meeting, the dispute escalated to the next level. The next day, Saffin called in another justice, Penn Townsend. Townsend and Sewall, while not in agreement with Saffin, did consent to hold Adam until the matter could be decided in a formal hearing before the Superior Court. To ensure Adam's appearance, a surety was tendered. Sureties were akin to promissory notes of a certain sum of money that would be sacrificed if a defendant did not appear at the appointed date, and were often put up by relatives or friends if the defendant did not have the required amount. In Adam's case, however, the surety was not money or property: a free black man named Dick offered himself (and was accepted) as Adam's surety. Adam may have recruited Dick himself, or perhaps Dick volunteered to help a friend. This simple act demonstrates their awareness of what was legally possible, which they likely learned from seeing whites do the same. The town of Boston had accepted the practice of individuals offering themselves as sureties for newly arrived immigrants or relatives for quite some time; Adam and Dick probably knew individuals who had done so.[60] Presumably, if Adam ran away, Dick would have been

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[59] *Publications of the Colonial Society of Massachusetts, Transactions 1892-94* , vol. 1 , 105-06.

obliged to offer his time and labor as payment. Dick apparently believed Adam trustworthy enough to take the risk.[61]

More importantly, Adam's fate now lay in the hands of the court. Adam may have believed this move was to his advantage; after all, Sewall, Townsend, and Addington had all expressed a desire to see him freed. When the Superior Court heard the dispute in May, however, they moved jurisdiction of the case to next meeting of the Superior Court in Bristol nine weeks later, since both Adam and John Saffin had lived there. In the interim, Saffin stewed. The "Rascally Negro," who "went about the Town swaggering at his pleasure in defiance of me his Master" vexed Saffin, and likely made him all the more determined to ensure Adam's permanent bondage by sealing his legal defeat and selling him south.[62]

Before the Court met again, Saffin pulled off a coup of sorts -- he managed to have himself promoted to the Superior Court. No doubt to Adam's dismay, this meant that Saffin would be one of the judges sitting on a case in which he was the plaintiff. A jury found Adam guilty of not honoring the terms of the contract, based largely on depositions offered by Saffin that characterized Adam as "Turbulent outragious and unruly." The depositions also accused Adam of striking the daughter of John Saffin's tenant, Thomas Shepard, as well as threatening Shepard's wife and Shepard himself with an ax, a pitchfork, and a knife. But in the face of this testimony, the judges (excepting Saffin) were hesitant to enter a judgment. Perhaps the judges took note of the apparent incongruousness of these white men who claimed that

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[60] See *A Report of the Record Comissioners of the City of Boston, containing Miscellaneous Papers* (Boston: Rockwell and Churchhill, 1886), 63-82. These pages contain a list of people who offered themselves as sureties between 1679-1700.

[61] *Publications of the Colonial Society of Massachusetts, Transactions 1892-94* , vol. 1 , 106.

[62] Ibid.

Adam was "a vile Refractory fellow" but were not hesitant to let him work for other whites. Additionally, the nineteenth century historian who commented on this case reported that Sewall's notes on the case questioned the propriety of Saffin adjudicating what was essentially his own dispute. Sewall also accused Saffin of tampering with the jury foreman -- not the first time Saffin had been so accused -- and complained that Saffin had "Connived at his Tenant Smith's being on the Jury, in the case between himself and Adam."[63]

Saffin was at least partially mistaken: Adam had not spent the whole of the interim between court hearings swaggering about Boston. Adam demonstrated his legal savvy and took advantage of the space the legal system afforded black slaves by obtaining testimony in his own behalf. He apparently traveled to Bristol before the trial in order to secure favorable testimony from white folks--not that of other slaves or free blacks, whose testimony would have been permissible but probably not given the same weight by the justices. The deponents, who, according to the justice of the peace who took their statements, were not summoned by the court but appeared voluntarily in late June of 1701, no doubt prompted by Adam. They had nothing but good to say about Adam. Mary Thurber, who knew Adam for at least eighteen years, testified that when Adam had been a servant to the minister John Miles and his widow, he had been reliable enough for her to hire him on occasion for a day's work. Furthermore, since she lived next to Saffin and his tenant Shepard and had many a day walked past Adam at work, she stated unequivocally that she had never seen him anything but "Diligent and Faithfull." John Martin and his father both stated that Adam "so far as ever I

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[63] *The Diary of Samuel Sewall, 1674-1729*, ed. M. Halsey Thomas (New York: Farrar, Straus, and Giroux, 1973), vol 1, 453. Entry dated September 11, 1701.

heard was counted a Faithfull and a good Servant" and had even "heard Mr. Thomas Shepherd say that sd Adam was more Faithfull of his Business than himself." Martin, Thurber, and four others testified that not only was Adam a "true Faithful and Diligent Servant," but that he had "suffered much for want both back & belly, that is to say for Victuals & cloathing" at the hands of his masters.[64]

With conflicting testimony and questions concerning the propriety of Saffin's judicial behavior in mind, the justices were no doubt uncomfortable telling Adam, who had approached them immediately after the trial to ask about his fate, that he had no hope of liberty. The justices secured a promise from Saffin that he would not sell Adam to another province, and then held the case over for another year, but stipulated that in the meantime Adam must remain in the service of his master. This was not sufficient for Saffin, however, who made it clear that since the court was not forthcoming with a final decision, he considered his promise not to sell Adam no longer binding.

With the other justices looking on, Saffin ordered Adam back to Boston, presumably to collect his belongings, and then proceed immediately to Castle Island to work under a Captain Clark. Adam complied, but not without ratcheting up the tension another notch in this skirmish of wills between himself and Saffin. Instead of marching forthwith to Castle Island, he spent nearly two weeks in Boston. When he finally did arrive in the middle of September of 1701, work under Captain Clark apparently went smoothly for the first few weeks. But trouble did not take long to catch up to Adam.

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[64] Suffolk Court Files, vol. 59, File #5941.

The witnesses' depositions seem to be incontrovertible and Adam does not appear to have contested their accounts. On October 7th, he "was removing some Earth, but did it not to Captain Clark's mind." Clark told him to do it differently. One witness merely stated that Adam refused; another said Adam "shewed himself very Surley and gave Saucy Answers" in his refusal.[65] It is entirely possible that any refusal, no matter how civil, would be seen in this light by white men, many of whom, even at this early stage of racial formation in British North America, had developed specific ideas about the character of black people. Samuel Sewall, for instance, blithely used an apparently common idiom of the day when he mentioned not wanting to treat Increase Mather "as a Negro," and how Cotton Mather had scolded him "as if I had used his father worse than a Neger."[66] Winthrop Jordan points out that in New England, as early as the 1640s "there were scattered signs that Negroes were regarded as different from English people not merely in their status as slaves."[67] Using 'Negro,' and not 'slave' for a common descriptive standard of contemptible treatment indicates that by the end of the seventeenth century, those scattered signs had become a part of most whites' everyday perception of black people. Any response by Adam that was less than immediate and total compliance to the commands of Captain Clark, regardless of whether or not an order was reasonable, would have been seen by some whites as "surley" and "saucy."

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[65] *Publications of the Colonial Society of Massachusetts, Transactions 1892-94* , vol. 1 , 112-113.

[66] *The Diary of Samuel Sewall, 1674-1729*, ed. M. Halsey Thomas, 454-455. Entry dated October 9 and 20, 1701. Likewise, Twombly and Moore noted other ways in which Africans were used in standard language to express what was undesirable. See Twombly and Moore, "Black Puritans" 226.

[67] Winthrop Jordan, *White over Black: American Attitudes Toward the Negro, 1550-1812* (New York: W.W. Norton & Co., 1968), 71.

The witnesses do agree on what happened after Adam's refusal. Captain Clark called Adam a rascal and possibly other names. Adam refused to allow himself to be defined by the terms that Clark and Saffin had used, and replied that "he was no Rogue, no Rascal, no Thief." Clark then struck Adam's tobacco pipe out of his mouth with a stick, shouting "you Rogue you shall do as I bid you," and shoved Adam, who shoved Clark in return. Adam warned Clark that if he was struck, he would respond in kind, but Clark, likely motivated by a need to keep face in front of the other laborers, landed a blow or two with his stick on Adam's shoulders. Adam, "in great Fury & rage...wrested the Stick out of [Clark's] hand and broke it" and then made good on his warning by launching a strike at Clark with his shovel. Clark deflected the blow with one arm, and then the other workers were on Adam. Adam's fury was hardly spent; he was "so furious and outragious and putt forth so great Strength that it was as much as Six or Seven of us could do to hold and restrain him," and one of those men made the mistake of putting his hand within range of Adam's teeth, who "like to have bit it off." Fortunately for that man, his hand was retrieved from Adam's mouth before much damage was done, and Adam was carted off to the dungeon.[68]

Saffin quickly moved to have Adam sold abroad. Likely smarting from Sewall's charges and wanting to be careful not to appear deceitful, he sent a boat to get Adam with instructions to take him to Judge Addington, "not doubting but this Wretch negro in regard of his late bloody attempt, should by Authority be forthwith sent aboard." To his surprise, Addington did not concur and instead had Adam jailed until the Quarter Sessions court dealt with the Castle Island incident.[69] That court jailed Adam for three more

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[68] *Publications of the Colonial Society of Massachusetts, Transactions 1892-94* , vol. 1 , 112-113.

months but did not resolve the question of Adam's status as free or slave. Ironically, this would gall Saffin further. Since Adam was still legally a slave, Saffin was responsible to pay the jailer for Adam's keep. Furthermore, when Adam was released but still awaiting the next hearing of the Superior Court, Saffin remained liable for his upkeep. Massachusetts towns regularly demanded that slaves not become the responsibility of the town, and required sureties from slaveowners who manumitted slaves in case the freedmen were unable to take care of themselves. The result, complained Saffin, was that he had been made "a meer Vassall to his slave in being at continuall cost and charges about him to supply him with all manner of Necessarys, as Cloaths, Bedding food and Phisick."[70] Furthermore, when Adam was afflicted by smallpox that year, Saffin was responsible to attend to him. For Saffin, this was the antithesis of how the law was meant to function--it was he, John Saffin the judge, merchant, and property owner, and not Adam the slave, criminal, and property, who had become the one "greatly Injured & oppressed...in a manner...there hath not been the like done in New England."[71]

Meanwhile, back on less turbulent shores, events were working in Adam's favor. A new governor excluded Saffin from his appointments to the Superior Court, possibly because of the serious charges earlier leveled by Sewall. When this court met in November of 1702, Saffin's claims against Adam were dismissed. Adam, having undoubtedly learned a good deal about the court's procedures, immediately presented a petition for his freedom along with the original contract Saffin had signed. The court appointed two

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[69] Ibid., 111-112.

[70] Ibid., 101.

[71] Ibid., 96.

lawyers to represent Adam and moved the case to the Inferior Court of Common Pleas. There, Adam pressed his advantage, not only suing for his freedom, but argued that "he being a freeman and ready to prove his liberty" and that Saffin "doth unjustly vex him" by claiming he was still a slave. To repair the damage done, Adam had the audacity to ask the court to have Saffin pay him one hundred pounds. It is easy to imagine how infuriated John Saffin must have been when Bristol's sheriff appeared at his home to deliver a summons requiring Saffin "answer to Adam Negroe of Boston."[72]

For reasons not clear, this court voided the summons and refused to allow Adam's appeal. His lawyers, prompted by the fact that "Adam dayly pursues [us] for the Tryall of his sd liberty" and that he was "being dayly threatened by the sd Mr. Saffin, to be sent out of this province into forreigne, parts to remaine a slave during his life" went back to the Superior Court to seek redress in May of 1703. The court responded with a somewhat legally ambiguous statement, defining Adam as neither slave nor free, but declaring that he "be in peace untill by due process of Law he be found a slave."[73]

Saffin, quick to go back on the offensive, circumvented the courts and now petitioned the legislature. He not only outlined the previous two plus years of trying to secure his property, but tried a new strategy. Saffin, once again revealing how deeply Adam had gotten under his skin, told the legislature that "the said vile Negro is at this Day set at large to goe at his pleasure." He then raised the specter of black rebelliousness, a fear that already had a deadly history before 1700. Adam, claimed Saffin, had not only told a jailer that "he would make no more to Twist or wring off the Neck of

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[72] The summons and the sheriff's brief account that he delivered the summons to Saffin's home can be found in Suffolk Court Files, vol. 55, File #5542.

[73] *Publications of the Colonial Society of Massachusetts, Transactions 1892-94* , vol. 1 , 95.

your petitioner then he would of a Snake" , but had also threatened "all them that have cross't his turbulent Humour, to the great scandall and evill example of all Negros both in Town and country whose eyes are upon this wretched Negro." Designating Adam as still a slave would have permitted Saffin to sell him and ensure that no one would be "exposed to any Detriment by the sd Negros villainous practices." The Assembly ordered the Court of General Sessions, upon which sat justices of the peace, to hear the case in August and for Adam to be jailed in the meantime.[74]

Samuel Sewall registered his indignation at Saffin's machinations with a poem:

> Superanuated Squier, wigg'd and powder'd with pretence,
> Much beguiles the just Assembly by his lying Impudence.
> None being by, his bold Attorneys push it on with might and main
> by which means poor simple Adam sinks to slavery again.[75]

Sewall aptly described the forces against which Adam struggled in his quest for freedom--Judge Saffin, his attorneys, and now the 'beguiled' legislature. But the prize was worth the fight, and Adam stated his case in court with his attorney. Nonetheless, a jury found Adam guilty of not performing the conditions of the original contract. Denying defeat, Adam promptly appealed the verdict.

In November of 1703, the Court of General Sessions heard John Saffin employ the same arguments he had used throughout, and appeal once again to a fear of black insurrection. His attorney testified that Adam threatened to

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[74] Ibid., 96-7.

[75] *The Diary of Samuel Sewall, 1674-1729*, ed. M. Halsey Thomas, 487. Entry dated June 8, 1703. Sewall also stated that Adam was "again imprisoned" for the trial ordered by the General Assembly, therefore I have surmised that Adam was also imprisoned by order of the Assembly.

"ring [Saffin's] neck if he had opportunity," and persistently displayed "cros carriage" and "needless malignance" and did not heed Saffin or his attorney.[76] Adam's lawyer asserted that Adam had indeed performed the conditions of the contract, and more importantly, that even if Adam had not done so, there was no penalty stipulated in the contract. Here Adam's attorney employed a new tactic: he argued that nothing in the contract, on which the entire dispute had hinged for well over two years, stated that Adam should "forfeit the freedom or liberty thereby intended." He focused on the phrase in the contract that stated "Allways provided that...Adam...go on chearfully quietly and Industriously," and argued that the word "provided" was "a consideracion and not a Condition." In contrast, "Enffranchisment is positive & not conditionall and liberty being a privilege the greatest that can be given to any man save his life, it ought not to be forfeited upon trivial and frivolous matters as is pretended by the Defendant." Adam's lawyer made Saffin's obsession with Adam's behavior irrelevant. He also cast Adam's status into doubt; the implication of his argument was that Adam entered into this contract on the same level as any white man, despite referring to Adam as a slave in other petitions--in this appeal, he carefully omitted any reference to Adam as anything but the "sd appellant."

The attorney's argument won the day and Adam's freedom. Either swayed by his novel interpretation of the contract or looking for any grounds to grant the petition for freedom, the jury, with Adam and Saffin present, found in Adam's favor. The court declared "That the sd Adam & his heirs be

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[76] John Saffin's attorney Daniel Willard's deposition in Suffolk Court Files, vol. 59, File # 5941.

at peace & quiet & free with all their Chattels from the sd John Saffin Esqr. & his heirs for Ever."[77]

Adam slides quietly out of the records after this final decision, despite a final futile attempt by Saffin to get the legislature to order the court to rehear the case. Adam settled in Boston, the site of his legal triumph and defiant stand against John Saffin. In what was perhaps a final thrust aimed at his former master, Adam took Saffin's last name for his own, thereby finalizing his self-identification as a free man. Though free from John Saffin, he did not remain entirely free from the law; in 1711 he was ordered by Boston's selectmen to give three days labor for cleaning and repairing the highways. This complied with an ordinance that had been instituted for free black men, who were not permitted to serve in the militia but could not be allowed to get by without some kind of service to the community. A few years after that, Adam Saffin came to the selectmen along with four other free black men and proposed that they be bound to support Leblond, a poor black woman living in Boston. The selectmen denied their request.[78]

Adam Saffin's story, given only a passing reference by other historians, deserves to be told. Adam's actions indicate that on some level he defined himself as a legal being--not a legal being with rights as white colonials and Americans would at the end of the eighteenth century, but at the very least as one who could enter into a contract and call upon the law to enforce it. For an African man in early New England to perceive himself this way is not surprising since the law in Massachusetts stated that even slaves ought to be

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[77] *Publications of The Colonial Society of Massachusetts, Transactions 1892-1894* , vol. 1, 100.

[78] *A Report of the Record Commissioners of the City of Boston, containing the Boston Records from 1700 to 1728* (Boston: Rockwell and Curchhill, 1883); *A Report of the Record Commissioners containing the Records of the Boston Selectmen from 1701 to 1715* (Boston: Rockwell and Churchill, 1884), March 13, 1713.

accorded some rudimentary legal privileges. What has been given little consideration in the accounts of Adam Saffin's legal battle is the degree to which he understood how the process worked and his reliance on the law.

Adam, who stood near the bottom of the social hierarchy, managed to harness any fear of the law's power. Seemingly small acts such as spending two weeks in Boston after being ordered by Saffin in court to go immediately from Boston to Castle Island are significant because they demonstrate that a black man, a slave, at the beginning of the eighteenth century, accurately understood the weak links in the law. He surely understood that the court could potentially levy serious punishments for some of his misdeeds, but Adam shrewdly perceived that the dynamics of the court, with Sewall and others being Saffin's rivals--or at least disapproving of Saffin personally-limited the effectiveness or likelihood of enforcement. He knew how to employ the power of the law for his own benefit, and he knew how far he could push on the weak links without bringing legal consequences down on his own head. There was always an element of risk lurking in the unknown; he could not know what the court's final decision would be, and he gambled that men who disapproved of slavery but did not necessarily hold high opinions of black men in general would care enough to prevail in his favor. Adam played his cards well.

But there is a question of why Adam went to Castle Island at all, and why he complied with other orders to appear in court, instead of simply absconding. Adam's readiness to use the law instead of flight or continued rebellion was likely spurred by his rootedness in the Boston and Bristol communities. John Saffin testified that Adam seemed to have enough connections in Boston to allow him to loiter without want of room and board; so, too, Dick's willingness to offer himself as a surety testifies to

Adam's network of friends and possibly relatives in the area. Lawrence Towner noted some years ago that servants with that kind of community grounding were more likely to use legal means of challenging owners, while servants less grounded in their communities were more likely to resort to unruly behavior or running away. In this sense, Adam fits the description of a creolized African: he had established relationships in this non-African society and exhibited a high degree of familiarity with how this society functioned.[79]

Perhaps he also believed if he openly defied the orders of the entire court and not just John Saffin, chances were good that eventually the law would catch up to him -- that despite the sympathies of Sewall and some of the other judges, they would be bound to try and catch and hold him. Instead of flight, Adam pushed the boundaries of obedience to the limit without actually putting himself in a position of losing all recourse to the court in his effort to gain freedom. His actions indicate that he believed his best bet was to rely on his contract, on his ability to convince influential white men that his interpretation of it was the correct one, and to trust that Sewall and the other justices--men he apparently knew on some level--would work within the legal process to win his freedom. And perhaps most importantly, Adam perceived that if he succeeded in gaining freedom through the court, it would be final--whereas running away meant that freedom would always be precarious, liable to be snatched away at any moment. Here the law offered

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[79] Lawrence W. Towner, " 'A Fondness for Freedom': Servant Protest in Puritan Society," *William and Mary Quarterly* 19 (April 1962), 201-219, 213; Berlin, *Many Thousands Gone*, 17-63; Thorton, *Africa and Africans in the Making of the Atlantic World*. There is little doubt that some of the slaves in Massachusetts fit the description of being creoles. One example is the will of John Stoughton, which lists "one man Negro named John & one Negro boy named Peter." Stoughton (or his family) traded a good bit in Barbados; so it is likely that is where they acquired these slaves. See *Publications of the Colonial Society*, vol. 29, 46-47.

security, and Adam knew it and pursued it; in a way, he pursued it again for Leblond a decade later, but failed. When he came to the Selectmen in 1713 seeking legal validation of his and the other free black mens' support of Leblond, it is doubtful that influential men like Samuel Sewall gave any attention to a seemingly mundane matter. Relying entirely on his own standing and that of four other black men proved insufficient. Having experienced the benefits of the law, Adam also experienced its limitations.

The legal battle Adam Saffin waged for two and half years points to other tensions for Africans in New England. When he went to court, Adam attempted to impose his interpretation of events and of the nature of the conflict--that the heart of the dispute was John Saffin's desire to violate a legal contract and deny a freeman his liberty. Through his own testimony and the testimony of his white allies, Adam presented the court with a picture of himself not as a man fighting against a social institution of exploitive labor, but as a laboring servant who had faithfully fulfilled the terms of a contract. Against that, John Saffin presented an interpretation of a black man who epitomized the negative character traits that white society was already beginning to ascribe as inherent to black slaves. A legal conflict, though typically interpreted by courts as a single issue dispute, involves multiple struggles over interpreting the conflict.[80] The various courts that adjudicated this case did not deny John Saffin's interpretation of black men; nor did the courts move in any way to threaten slavery. Again, the winning argument made by Adam's attorney is instructive: he appealed not to the injustice of slavery, but to the legal wording of the labor contract. Given the distaste the

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[80] See Sally Engle Merry, *Getting Justice and Getting Even: Legal Consciousness among Working-class Americans* (Chicago: University of Chicago Press, 1990), 87; and Barbara Yngvesson and Lynn Mather, "Courts, Moots, and the Disputing Process" in *Empirical Theories about Courts*, ed. Keith Boyum and Lynn Mather (New York: Longman, 1983), 52.

jurists appear to have held for John Saffin, it is probable that they welcomed an argument that gave them a legal hook upon which to hang a judgment against him that in no way threatened slavery. In order to secure his freedom, Adam and his attorney, far from challenging slavery, used a construction of the conflict "which orders facts according to normative claims" that successfully persuaded the court to decide in their favor.[81] Resorting to those normative claims validated the court's authority to reinforce and perpetuate those norms in their own lives.

Thinking of identity as a continual process that, for African slaves, involved establishing and maintaining boundaries as well as negotiating relationships and transactions, points to how Adam's court battles likely affected his self-conception in a variety of ways. Clearly, Adam attempted to define himself as a freeman before the court concurred. But establishing this simple yet vital boundary of freedom that achieved permanence between himself and John Saffin--or, for that matter, between himself and every white man or woman--came only by negotiating through the legal process. Achieving his goal only through the decree of the court likely worked to both reinforce and mitigate Adam's sense of self as an individual who controlled his own fate. Success, accomplished largely because of his own tenacity and understanding of the legal system, reinforced this image of self. But Adam had also experienced defeats in his battles for freedom. Failure--even though not permanent--combined with a victory achieved not on the word of Adam or his witnesses, but due to a clever argument by his attorney, reinforced an image of self bounded by and dependent on Puritan systems of authority. The point is not that submission to governing authorities was a novel experience

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[81] Merry, *Getting Justice and Getting Even*, 92.

for Africans in New England, but that the governing authorities had distinctly Puritan and English forms, symbols, and process.

Legal anthropologist Sally Engle Merry has pointed out that conflicts often "have meaning for how the person thinks about himself or herself and his or her social world, her ability to cope and to defend herself, and her ability to create an acceptable image of herself and her life."[82] Adam's resiliency during this conflict signified that he indeed had the ability to cope and carve out a place for himself in this society. His actions during this conflict, such as loitering about Boston long after being ordered to Bristol by John Saffin or insisting that his work on Castle Island was good enough, signified that Adam's acceptable image of himself was that of a freeman who controlled his own fate. He felt, however, that the best method of making this self-image a meaningful reality lay not simply through the public statement of his own actions, but through the public statement of one of the central institutions of white society--the law.

Adam Saffin provides perhaps the most vivid example of how transitioning to New England society and the space provided within Puritan law could come together to influence Africans' evolving identity. Other black men and women, both slave and free, also experienced the power of the law to affect their daily lives to varying degrees . A few, like Adam, experienced the law's ability to protect them from slavery by gaining permanent legal freedom. Some, convicted of serious or minor crimes, felt the heavy hand of the law; others, cleared of crimes, experienced the law's ability to protect them from grievous consequences.[83] Whether encountering the law's ability to

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[82] Ibid., 98.

[83] Several cases of this nature appear in *Publications of the Colonial Society of Massachusetts, Collections*, vol. 29-30 (Boston: The Colonial Society, 1933). These volumes are a reprint of

protect, punish, or simply regulate daily life, Africans in Massachusetts had a long record of persistent engagement with the law well before Qouck Walker and other African Americans played their part in dismantling slavery after the American Revolution. It is to that record this chapter now turns.

Not long after the arrival of the first black slaves, an African woman encountered the opportunity for both fear and protection under the law. Zippora, slave to John Manning in Suffolk County, stood accused of fornicating with another slave, Jeffea, and murdering her newborn son by cutting off its head in September of 1662. There was some conflicting evidence, however, as Zippora, in a petition pleading for the court's "pious consideration," confessed to the sin of fornification with Jeffea but later insisted that the child had been born dead and she had buried it. Apparently, a decapitated child had been exhumed, but Zippora argued that her child had been "not so whitish" and "not so bigg" as the one that had been found. She testified that three white women, one her owner's wife with her during and after the delivery, and that a Mrs. Parker told her to bury the child. Zippora, who said she had not even known she was with child and probably in a daze from shock, pain, and grief, obeyed and dug a hole about a foot and half deep in a muddy plain and there placed her son "with its head on."

Further depositions hinted at a conspiracy to blame Zippora for the crime. Betty, a black woman, testified that a week or more before the incident she had spoken with Mrs. Sands, one of the three white women present during Zippora's labor, and informed Sands that Zippora was pregnant. On a

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Suffolk County Court Records. Also, the Thwing Database has many examples of cases like these from the Supreme Judicial Court and the Court of Assistants; also see Twombly and Moore, "Black Puritan: The Negro in Seventh-Century Massachusetts,"; and Towner, " 'A Fondness for Freedom.' "

Thursday, the day after Zippora's tragic delivery, Betty ran into Sands, who said she had talked with Zippora's mistress, and that Zippora was *not* pregnant. Another black woman, Mary, testified that "hearing her countrywoman zipporah was still a bed," she went pay her a visit. This was the same day that Sands had told Betty there had been no pregnancy, much less a stillborn baby. When Mary arrived, Mrs. Manning, Zippora's mistress, confronted her, saying that "she was bold to come & see her countrywoman" and that Zippora was well and on her feet. Perhaps the most damming evidence came from a white servant woman of Mrs. Parker's, who testified that she had been in the house the night of the birth, and that Mrs. Parker had "bid her take up [illegible] for her negro was delivered of a dead child." She heard the three white women tell Zipporah to bury it "since it was dead borne," and that Zipporah obeyed. This servant woman also expressed puzzlement concerning why the women seemed so clandestine, saying "she never heard such a thing kept secret" and that she had overheard Mrs. Manning speak of sending Zipporah to Barbados. The testimony of these three women, one white and two black, painted a picture of Sands, Parker, and Manning trying to hide something.[84]

In the light of this testimony, the grand jury did not allow the indictment to proceed to a trial. It is possible that the white women killed the infant and told Zippora her son was stillborn; it is also possible that the child had a light complexion, indicating that the father was not Jeffea, but perhaps one of their husbands, a fact they wished to hide. Zippora's claim that her dead son had been "not so whitish" as the decapitated child suggests that her

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[84] Suffolk Court Files vol. 5, File #605

child had indeed been light-skinned--just not as white as the other murdered infant.

Regardless, the legal process worked for Zippora. It is likely she is the same free black woman named Zippora who obtained a deed to a plot of land and a house in 1670, becoming perhaps the first property-owning black woman in Massachusetts.[85] The law's ability to protect directly impacted Zippora by providing security from false prosecution and, seven years later, through the security of a property deed.

For a few other black men and women, the law in seventeenth-century Massachusetts worked to help establish boundaries, though in a less dramatic manner than the case of Adam Saffin and Zippora. Zippora's case drew other black women and men into the legal sphere--not only did Betty and Mary gain some familiarity with the legal process; so, too, did their husbands, Angola and Frank, though indirectly. This may have very well been part of the genesis of the black community in Suffolk County. At a time when there were few slaves in Massachusetts, it is notable that at least two other black women were involved with Zippora. Angola later witnessed the law's power to reinforce his claim on his personal property when he successfully prosecuted three Indian men for breaking into his house in 1672, for which each received twenty stripes. Frank was likely the same Frank who was acquitted by the grand jury--lead by the same foreman as the grand jury in Zippora's case--in 1668 after being charged with helping a white man awaiting trial for murder escape from jail.[86]

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[85] Twombly and Moore, "Black Puritan: The Negro in Seventh-Century Massachusetts," 236.

[86] Angola's case is in *Publications of the Colonial Society of Massachusetts, Collections*, vol. 29, 119; Frank's case is in *Records of the Court of Assistants of the Colony of the Massachusetts Bay 1630-1692* (Boston: Suffolk County, 1928), vol. 3, 194. Hugh Mason was the foreman of the grand jury for both cases involving Zippora and Frank.

Angola, a slave of Robert Keayne, achieved freedom at some point after Keayne's death. In 1653 Keayne had stipulated in his will that Angola, along with two other slaves, were to receive "some young Heifers to rayse a stock" two years after his own death. Angola's time had been sold to another free black man--which appears to have meant that Angola himself had been sold--and he either earned or was given his freedom in 1656. The man who bought Angola's time, Sebastian Kaine, put his mark on a legal document that committed his house in Dorchester and over four acres along with its wheat crop if he did not pay the balance of Anna Keayne's selling price of sixteen pounds. Angola, like Sebastian Kaine, became a property owner. Part of his property came in an unusual manner, when Governor Richard Bellingham gave him a 50ft. square plot for saving the Governor from drowning. Angola had been paddling down a river when he came across Bellingham in a sinking boat.[87] For both of these men, and Zippora and a few other black property owners, the law established permanent ownership of a valued commodity in seventeenth century New England. Whites could make no claims on their property. The legal power of the deed granted a measure of distance between black property owners and white New Englanders through the security promised in the legal documents on which they put their marks. In the first few decades of freedom, these Africans--who were likely among the first brought to Massachusetts shores--navigated their way comfortably through legal territory to lay down important boundaries securing personal freedom.

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[87] See Angola and Sebastian Kaine in the Thwing Database and in Twombly and Moore, "Black Puritan: The Negro in Seventh-Century Massachusetts," 235-36. Kaine also went by 'Bus Bus', and his name is spelled variously as Bostian Ken, Busse, and Bastian Kenn.

After Angola's death, Elizabeth also experienced the law's ability to protect property when the county court validated her inheritance of the house and land, and that her property would pass on to her children upon her death.[88] Though neither Angola or Elizabeth would be alive to witness it, the law also conferred mixed blessings for their family: in 1681, their infant granddaughter, whose mother had died and whose father had been banished from the colony, was committed by the court into the selectmen's hands, who "may put out the said Child being a Negro" as a servant until she was thirty years old. Though the court's order may seem harsh, it ensured that the infant Mary Sapato would have some provision. It may be that there were no other relatives or friends who could have cared for Mary without binding her to servitude for thirty years, but the court's reasoning-- "the said Child being a Negro"--indicates that one key factor in their order was equating blackness with legal servitude.[89] For the Angola family, as for Zippora who lived under the threat of being sent to Barbados, and other black women and men, their status as African and black was never entirely removed from their relationship with a legal system that could define them as property. It proved to be a relationship beneficial and constricting, empowering and oppressive.

Seventeenth-century Africans did not have to be personally involved with the law to be acquainted with legal process or power. They frequently witnessed or were aware of the legal imbroglios that enveloped their masters. In 1672, one slave contributed to a strident legal dispute among whites simply by complaining that a white neighbor was causing trouble by taking a pin out of a water pump, thereby preventing this African slave from accomplishing

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[88] *Publications of the Colonial Society of Massachusetts, Collections*, vol. 30, 598.

[89] Mary Sapato appears in the Thwing Database.

an assigned task of fetching a pail of water.[90] In 1675, a white man was charged for killing a dog and threatening the dog of a young slave--and though the charge was not proved, the defendant found himself fined for "behaving himselfe very rudely & unmannerly."[91] It is probable that the young slave came to court to testify, and subsequently witnessed not only the court's expectations of respect and decorum, but the mechanics of how a court case proceeded.

The most powerful witness of the law's power to punish came through public executions. In the summer of 1681, Maria, slave of Roxbury resident Joshua Lamb, "being instigated by ye devill," took live coals from a fire and, laying it on the floor near a door, burnt down the house of a Doctor Thomas Swann. Maria then crept back into her master's house through a hole at the back door and set it ablaze with another coal. Maria not only confessed to the details of the crime, but accused the slaves of two other white men of aiding her arson spree, Chefalia and Coffee. The Grand Jury did not return a bill of indictment against these two, but deeming them to be dangerous slaves based on the suspicion of their involvement, the Court of Assistants ordered both men to be sold out of the country. The 'space' of personhood that New England law supposedly afforded slaves closed very quickly for Chefalia and Coffee, even though there had been no verdict against them. Maria, who admitted her guilt, was sentenced to be burned to death.[92] This sentence was apparently carried out. According to a nineteenth-century historian, Increase Mather's original diary had an entry for September 22, 1681, briefly noting the

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[90] *Publications of the Colonial Society*, vol. 29, 196.

[91] *Publications of the Colonial Society*, vol. 30, 601.

[92] *Records of the Court of Assistants of the Colony of the Massachusetts Bay, 1630-1692* (Boston: Suffolk County, 1901), vol. 1, 197-99.

burning to death of "a negro woman who burnt 2 houses at Roxbury July 12--in one of wch a child was burnt to death." Mather also noted that this was the first execution by fire in New England.[93]

Just days after Maria burned down the Roxbury homes, another slave, Jack, was caught and accused of arson in North Hampton. Whether or not Jack, if he was indeed guilty, had known of and been inspired by Maria's act is unknown. Tried on the same day and in the same court, Jack initially confessed, then recanted, but to no avail. He was sentenced to be "hangd by the neck till he be dead & then taken downe & burnt to Ashes in the fier wth Maria negro." Five years previous, a Boston slave named Basto who insisted upon his innocence was accused, convicted, and executed for raping the three year old daughter of his owner.

Being public affairs, executions carried weighty symbolic meaning. When a young slave named Bristol was executed in 1763, a number of slave and free black men and women were present; it is not unreasonable to suppose that there were some black faces in the audience at public executions in the seventeenth century.[94] Executions were the ultimate example of the ability of the law to remove all boundaries provided by personal liberties, while simultaneously making a public statement that the law protected the lives of the rest of the community by eliminating alleged murderers.

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[93] *The Case of Maria in the Court of Assistants in 1681* (Boston: n.d.) 10.

[94] From Sylvanus Conant, *The Blood of Abel, and the Blood of Jesus considered and improved, in a Sermon Delivered at Taunton, December the First 1763. Upon the Day of the Execution of Bristol, A Negro Boy of about Sixteen Years Old, for the Murder of Miss Elizabeth McKinstry* (Boston: 1764) 34. On the symbolic importance of executions to maintain the image of the majesty and power of the law, see Douglas Hay, "Property, Authority and the Criminal Law" in *Albions' Fatal Tree: Crime and Society in Eighteenth-Century England* (New York: Pantheon Books, 1975), 3-64.

Furthermore, sentences in Puritan New England were not merely punitive; they functioned to maintain political and social order.[95]

Maintaining the place of slaves and free black women and men in that social order receives little consideration. Historians note that New England and most of the northern colonies did not possess an intense fear of slave insurrections that occasionally convulsed the southern states, primarily due to the low density of slaves in most of New England. While it is true that there was little reason to fear the kind of broad slave rebellion that seemed plausible in other areas, this does not mean that white New Englanders did not fear slave rebelliousness. In some respects, white slave owners had good reason to fear slaves rising up against them--perhaps not in an organized, wide-scale rebellion, but on an individual level. The 'family slavery' that existed in much of New England gave slaves opportunity to bond with their owners and families, but it also fostered an environment in which personal friction and resentment could grow intense. Some of the crimes that slaves in Massachusetts committed, such as Maria's arson, if she was indeed guilty as she confessed, seem to have had a decidedly personal edge--when she planted the coals in her master's house during the night, she placed them in the bed chamber, probably hoping to trap both her master and Doctor Swann in the resulting infernos.

Piecing together the experience of Africans with the legal system fills in some of the spaces in the picture of 'family slavery' that scholars such as William Piersen and Joanne Pope Melish have constructed. Piersen convincingly argues that New Englander slaveowners typically set out to

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[95] See Howard Schweber, "Ordering Principles: The Adjudication of Criminal Cases in Puritan Massachusetts, 1629-1650," *Law and Society Review* 32 (No. 2, 1998) 376-408; Cornelia Dayton, *Women before the Bar: Gender, Law, and Society in Connecticut, 1639-1789* (Chapel Hill: University of North Carolina Press, 1995).

incorporate slaves into familial and subordinate relationships. Slaves were often bought as children or infants, making the inculcation of their place within the family easier. Naturally, genuinely close relationships often resulted; Cotton Mather went so far as to assert that slaves were not only "of our own household," but were "more clearly related to us than many others are." Piersen states that when white and enslaved black children grew up together, "close relationships usually developed."[96] Melish points out that the familial relationships characterizing New England slavery were frequently genuine as far as the existence of emotional ties. Many owners not only considered slaves as a part of the family, but experienced acute grief when a slave died.[97]

But many slave-owning families lived in a state of tension with their African charges, and not all contemporaries held Cotton Mather's rather benign impression of the relationships between slaves and their owners. In 1700 Samuel Sewall observed that slaves' "continual aspiring after their forbidden Liberty, renders them Unwilling Servants." He also questioned, perhaps with Mather in mind, the notion that slaves could actually become part of a white family. Taking into account the "disparity in their Conditions, Colour & Hair," Sewall doubted that Africans could ever "embody with us, and grow up into orderly Families."[98] Sewall knew firsthand of slaves' 'continual aspiring' for the freedoms that their white slave-owning families daily lived out in front of them, as well as the persistent unwillingness of some Africans to remain in bondage. Sewall's growing discomfort, prompted

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[96] Piersen, *Black Yankees,* 26.

[97] Melish, *Disowning Slavery,* 23-34.

[98] *The Dairy of Samuel Sewall,* ed. Harvey Wish (New York: G.P. Putnam's Sons, 1967). Contained in "The Selling of Joseph," reprinted after the entry dated June 19 1700.

by issues before the Assembly concerning the slave trade and a petition to free two 'unjustly' enslaved Africans, lead him to write this early antislavery tract, which may have been aimed at his fellow jurist and staunch supporter of slavery, John Saffin.[99] Sewall's early antislavery activism, while in part due to his own theological convictions, was also due to the agitation of slaves themselves-- Adam and others who, through their more vociferous public misbehavior, were a part of the cadre of 'unwilling servants' that helped convince a vanguard of men like Sewall that slavery was at best a troublesome institution.

Piersen and Melish and other scholars who have studied New England slavery have described the 'distance' within the familial slave-master relationships. Slaveowners may have considered their chattel as part of the family, yet they did not forget that Africans were still chattel. And though 'family slavery' may have mitigated some of the harsh reality of what was in the end an exploitive relationship, it also frequently reinforced relational distance through simple mechanisms such as seating arrangements.[100] For some slaves that duality of being 'in' the family but persistently reminded they were not 'of' the family must have been a persistent irritation. For a few, that irritation spilled over into outright antagonism that found release in criminal acts. The argument here does not so much undermine 'family slavery' as suggest that the connotations of the term can obscure the animosity and outright hostility that caused some slaves to find themselves answering to the law.

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[99] Lorenzo Greene described Saffin as Sewall's "bitter enemy." See Greene, *The Negro in Colonial New England*, 297; also see Arthur Zilversmit, *The First Emancipation: The Abolition of Slavery in the North*, (Chicago: University of Chicago Press, 1974), 58.

[100] Piersen, *Black Yankees*, 31.

Though the cases documented here may seem few in light of a time span of several decades, only the stories of men and women who were caught and brought to the superior courts are readily available in the records. Other slaves certainly committed crimes against their masters that went undetected, or were dealt with personally or at the justice of the peace level, without ever reaching the higher courts. One Boston justice of the peace examined Cesar, a Boston slave, for a series of thefts he committed over a period of seven months. Running away during the early winter of 1717, Cesar told the justice about his exploits in great detail--so much detail, in fact, that the impression is of a slave, knowing the game is up, boasting of how easily he frustrated those who thought they held power over him. Cesar regaled the justice with stories of he "oft times" broke into his master's house for food and clothing; of breaking into another Boston home where he "took about half a cheese [and] a Silver cup in which he drew beer upon"; of enlisting an Indian named Toby to help him steal butter and two-gallon stone jug filled with rum"; and acquiring geese, pork, and veal--all the while remaining in Boston. That Cesar chose to target his master's home repeatedly again speaks to the kind of personal antagonism that could run high in a close environment. The record of this examination, a single sheet of paper among the justice's private papers, happened to survive; certainly there are far more that have disappeared. In 1734, Answer, the slave of a Boston blacksmith, was indicted but acquitted for burning down his owner's barn and house. In 1747, two slaves from the Boston area, both named Cato, were indicted for "entering with force & arms" and stealing bills of credit worth œ1250 old tenor from one of their masters. One confessed, the other plead not guilty but was found guilty, no doubt in large part due to the confession of his partner, and both were sentenced to 20

stripes and to repay triple the value of the bills. Cesar epitomizes the kind of 'unwilling servant' Sewall had in mind.[101]

The most extreme expression of being an 'unwilling servant' came from slaves who murdered their masters. In the middle of the eighteenth century, there were three documented instances of Boston area slaves assassinating their masters by poison. The most complex murder directly involved three slaves, Mark, Phillis, and Phoebe, and indirectly involved others who heard of or assisted their scheme. According to Phillis' testimony, Mark first planted the idea of doing away with their owner, Captain John Codman, during the winter of 1755. Mark had apparently given this a good deal of thought; Phillis said Mark had read through the Bible and discerned that "it was no Sin to kill him if they did not lay violent Hands on him So as to shed Blood, by sticking or stabbing or cutting his Throat." The plan came to fruition that summer. When the women finally agreed, Mark procured some poison--apparently arsenic--from Robbin, an acquaintance and slave of an apothecary in Boston. Phillis testified that Robbin served as their guide for how to administer the poison and how much to use. Aside from working for an apothecary, Robbin apparently had experience in the matter, having previously assisted another group of slaves in murdering their master. Phillis said this crime had gone undetected.

In his testimony, Mark insisted he knew nothing of a plan to murder Codman. Phoebe, he claimed, had asked him for something lethal so she could kill three of her husband's pigs, possibly under the guise of submitting to a town ordinance prohibiting slaves, free blacks, and Indians from keeping

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[101] Cesar's case is found in the papers of James Otis, Sr., 1642-1747, Box 1. Located at the Massachusetts Historical Society. Basto appears in *Records of the Court of Assistants of the Colony of the Massachusetts Bay, 1630-1692*, vol. 1, 74; Answer and Cato appear in the Thwing Database.

hogs.[102] Phoebe and Phillis, who should have epitomized the model of 'family slavery,' having been bought as a little girl and served Codman virtually her entire life, made absolutely sure that their owner would die: they put a black powder called Potter's lead in Codman's soup (who had complained it was a bit gritty), and put another kind of poison, this one a white powder and thus less visible, in "his barly Drink, and into his Infusion, and into his Chocalate, and into his Watergruel." Admitting that "I felt ugly" after lacing nearly everything in sight with poison, Phillis claimed she had a change of heart, and poured out the barly and tried to clean the mug. But her accomplice Phoebe had already poisoned his other food and drink.

The court did not buy Mark's alibi. Supplementing Phillis' testimony was that of Phoebe's husband, Quacoe. Quacoe told the justice of the peace who performed the initial examinations that another black man, Kerr, had come to him during the previous winter and told him of conversations with Mark about getting poison. Mark had also asked Kerr if Phoebe had gotten any poison. A concerned Quacoe warned his wife not to have anything to do with Mark, for "she would be Brought into Trouble by him." What happened to Phoebe is not clear; Phoebe does not appear in the indictment or in the judgment. Phillis and Mark were both sentenced to be executed near a public highway on the afternoon of September 6, Phillis by burning and Mark by hanging. Both were "drawn" to the place of execution, described by a nineteenth century historian as pulling the condemned on a sled behind a horse, presumably to extend the public spectacle of execution. The spectacle continued after death; Mark's body was hung in chains from a gibbet (an

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[102] Boston selectmen had passed an ordinance preventing the keeping of hogs within the city in 1746 that specifically targeted black and Indian city dwellers. See *A Report of the Record Comissioners of the City of Boston, containing the Boston Records from 1742 to 1757* (Boston: Rockwell and Churchill, 1885), May 23, 1746.

upright post with a crosspiece) along the highway, and remained there for several years afterward--long enough for the spot to become such a familiar landmark that Paul Revere referred to it when he recounted his famous ride as the place "where Mark was hung in chains."[103]

Unlike Adam Saffin, Mark, Phillis, and Phoebe did not conceive of themselves as free legal beings. While they may have understood that they could enjoy the privilege of being tried in a court, their intention, if they did indeed murder Captain Codman, was not to gain freedom: Phillis claimed that Mark, commenting on Robbin's complicity in the murder of another slaveowner, had said "Mr. Salmon's Negros poison'd him, and were never found out, but had got good masters, & so might we." The objective, then, was to improve the situation by improving the master.[104]

The motive of another slave, also named Phillis, for murdering her master is not known. But she may have been the example for Mark and Phillis, preceding them by five years. This Phillis had even more direct access to the means for murder; her owner, John Greenleaf, was an apothecary. When the Superior Court met in February of 1750, they sentenced Phillis to be executed in May of 1750, nearly a year after Greenleaf died. In April the Boston selectmen were instructed by the Court of General Sessions to "consider of some suitable place for erecting a Gallows," so apparently Phillis was hung.

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[103] *Collections of the Massachusetts Historical Society*, vol. 5, 107. David Hackett Fischer notes that in order to get to Boston from Charlestown, one had to go past "a rusted iron cage that held the rotting bones of Mark." See Fischer, *Paul Revere's Ride* (New York: Oxford University Press, 1994), 10.

[104] Account of Mark, Phillis, and Phebe is in *Proceedings of the Massachusetts Historical Society* (Boston: Massachusetts Historical Society, 1884), vol. 20, 122-157.

The selectmen chose a small knoll on a stretch of land commonly referred to as Boston Neck.[105] The Neck had been used before for hangings and, like the gibbeting of Mark, became a geographical reference point well known to Boston residents. In December of 1749, for instance, the selectmen identified a piece of property as being "on Boston Neck, where the Gallows now stands."[106] The gallows, "the first structure that greeted a traveler" heading north into Boston, would have been impossible to miss on this desolate stretch of land that was nearly devoid of buildings or trees.[107] The Neck was frequented by slave and free black travelers; one of the ordinances renewed annually by the selectmen set up Sabbath-day watches on the Neck, when the regular militia watches were not operating, for the expressed purpose of to prevent disorders caused by "loose vain Persons Servants Negroes &c Unnecessarily Travelling or Walking to & from Boston & Roxbury with Neglect of Attending on the Publick Worship of God in either place and bringing from the Neighbouring Towns Corn Apples & other fruits of the Earth to the great disturbance of the Publick peace & Scandal of Our Christian Profession."[108] Here the power of the law converged in two important ways: the daily reminder of terror of the execution of justice represented by the gallows, and the daily reminder of the ability of law to

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[105] *A Report of the Record Commissioners of the City of Boston, containing the Selectmen's Minutes from 1742-1753* (Boston: Rockwell and Churchill, 1887), April 17 1750/51.

[106] Ibid, December 1749.

[107] Fischer, *Paul Revere's Ride*, 10; Walter Muir Whitehill, *Boston: A Topographical History* (Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 1968), 74-75. Whitehill notes that it was not until 1801 that the selectmen tried to develop the virtually empty Boston Neck area. Even then, there was little success until much later; the selectmen informed the town meeting in 1811 that there was little demand.

[108] *A Report of the Record Commissioners of the City of Boston, containing the Selectmen's Minutes from 1742-1753* , September 1743 and annually thereafter.

exercise power over their daily lives. Some black folks were probably glad to have the militia and watchmen acting as a form of crowd control; others likely resented it. But in this and other subtle ways, slaves and free black men and women encountered the ability of the law to shape the form of their daily lives.

They frequently encountered laws directed with black and Indian peoples in mind. As early as 1723, the selectmen drew up "Articles for the Better Regulating of Indians Negros and Molattos" that penalized free blacks and Indians with a fine and a severe whipping if they allowed a slave into their "House yard garden or outhouse" without permission of the slaveowner. Furthermore, the selectmen stipulated that to ensure enforcement, "any two free holders may Enter the House of any such free Indian Negro or Molatto." Other ordinances prevented these three groups from owning firearms, selling "strong drink Cakes or any other Provision" on highways or on the Common, and several more aimed at circumscribing nighttime activities among free and slave blacks and Indians.[109] Attempting to come up with "some Method for the better and more Effectual Watching the Town of Boston," a committee appointed by the town meeting in 1736 made several recommendations. The only recommendation targeting a specific group of people, though, called for the watchmen to "take up all Negro and Molatto Servants, that shall be unseasonably Absent from their Masters Families" after ten o'clock at night. The town returned to this issue periodically, seeking in 1750 to find if "any more effectual Method than is

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[109] *A Report of the Record Commissioners of the City of Boston, containing the Boston Records from 1700 to 1728* (Boston: Rockwell and Curchhill, 1883), April, 1723.

already prescrib'd by Law can be taken, to prevent the Disorders that are frequently committed by Negroes in the night."[110]

Some ordinances, though ostensibly aimed at whites, effectually impacted blacks. In 1761, the selectmen warned that sellers of "Rum & other Spiritous Liquors to Negro & Moletta Servants, not bringing Certificates from their Masters" would be penalized. Though directed at the white merchants and masters, this abridged some of the informal freedoms of black servants and slaves--some of whom surely had used their masters' taste for liquor as a pretext to get some for themselves. Other ordinances persistently reminded free black men and women that their freedom was mitigated by racial ideologies that expected African Americans to be a drain on society. Scipio, a free black Philadelphian who moved to Boston in 1761, knowing that he would be the object of such expectations, came to the selectmen offering £100 as a surety against becoming a charge to the town.[111]

Though it is not possible to determine the rigor of enforcement, the persistence efforts in the town meetings and by the selectmen to regulate the lives of black men and women indicates that this was an ongoing tension, a tension that must have been felt by black Bostonians. Furthermore, this illustrates the ambivalence that African Americans likely held regarding the law: it could be a powerful instrument for protection or freedom, and a powerful instrument for oppression.

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[110] *A Report of the Record Commissioners of the City of Boston, containing the Boston Records from 1729 to 1742* (Boston: Rockwell and Churchill, 1885), April 1736; *A Report of the Record Commissioners of the City of Boston, containing the Boston Records from 1742 to 1757* (Boston: Rockwell and Churchill, 1885), March 1750/51.

[111] *A Report of the Record Commissioners of the City of Boston, containing the Selectmen's Minutes from 1754-1763* (Boston: Rockwell and Churchill, 1887), August 1761.

Occasionally, savvy African Americans, following in the footsteps of people like Adam Saffin, managed to protect themselves from the oppressive side of the law by using the law against itself. In 1769, when the selectmen once again attempted to put some teeth into the ordinance aimed at preventing free and enslaved blacks from being out late at night, they required the watchmen to patrol in pairs in order to ensure the arrest of "all negroes found out after dark without a lantern." Presumably, the selectmen had decided that any black man or woman without a light was skulking about for no good reason. Soon thereafter, the watch picked up an elderly black man "prowling about in total darkness." They held him overnight, brought him before a judge the next morning, only to hear him plead not guilty and hold up an old lantern as evidence of his innocence. The lantern, however, had no candle or oil. The ordinance was quickly rewritten to specify that any black man or woman had to have a lantern with a candle. The same man was caught by the watch again, pled not guilty again, and once more held up an old lantern -- with a fresh candle that had obviously never been lit. The judge, probably irritated by the old man's flirtatious run-ins with the law, discharged him this time with a reprimand. The law was rewritten a second time, and this time specified that any slaves out after nine o'clock had to be "carrying Lanthorns with light Candles and can give a good and satisfactory Account of their Business."[112] Though whites may have repeated this story as an example of what was in their view a literal-minded black simpleton managing to dodge legal consequences, it is more plausible that this man,

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[112] Edward H. Savage, *A Chronological History of the Boston Watch and Police, from 1631 to 1865; Together with the Recollections of a Boston Police Officer, or Boston by Daylight and Gaslight* (Boston: 1865), 33; *A Report of the Record Comissioners of the City of Boston, containing the Selectmen's Minutes from 1769 to April, 1775* (Boston: Rockwell and Churchill, 1893), November 9 1769.

acting as sort of a human trickster, intentionally did as little as possible to comply with a law that he considered a nuisance. He apparently knew he was on safe ground in pleading not guilty, and knew when to stop. For a time, he succeeded in using a literal interpretation of the law to evade submitting to an oppressive ordinance.

While the town was busy seeking ways to confine the daily lives of black Bostonians, there were other instances of African Americans using the law for their own ends. While not quite as dramatic as Adam Saffin's story, James, a slave to Samuel Burnell, pursued his freedom after his master of 40 years died in 1736. James insisted that his master had always intended to free him upon his own death. Burnell's widow and children claimed that James was part of the estate. James petitioned the legislature for his freedom, which suspected that the final will had been "by some ill Arts conveyed away, and probably destroyed, so that there cannot be a legal Probate thereof, yet there being sufficiently Evidence that ...the Testator had ordered the freedom of the Petitioner." The legislature, giving a black man the benefit of the doubt against a white woman and her children, granted James' freedom in October of 1737, so long as he could provide a security to the town, and in December his freedom was finalized when two white men stepped forward to give a bond of £200.[113] In 1740, John Woodby, a free black man, complained to the selectmen that "he was taken up in the street" by one of the watchmen as he was going home from work at night, subsequently imprisoned and fined 13 shillings, "all without any legal process - which he humbly Apprehends is against Law and Justice." The watchman was probably acting according to the ordinances restricting night activity by black Bostonians, but perhaps was too eager and accosted Woodby too early in the evening. Woodby apprehended

[113] James appears in the Thwing Database.

correctly; the selectmen told the watchman to be more cautious and to "act prudently in all such matters in the future.[114]

As the eighteenth century wore on, and the number of freed African Americans in Boston increased, their lives were shaped by laws that were intended to regulate life, regardless of color, in what was becoming an urban environment. The selectmen passed a series of rather mundane laws in 1757; some fined "persons who dug holes or broke the ground on streets or lanes; left dirt, rubbish, dung, carrion," levied fines against "playing or kicking of Foot-ball within any of the Streets or Lanes", required homeowners to rake up the dirt from their doors into the streets so farmers could pick it up, mandated that no one over 12 years old could undress and wash themselves in the streets until one hour after sunset, and so on.[115] As Boston grew, so too did the pervasiveness of legal authority governing daily life. Black Bostonians' awareness of the power of the law grew as well, since they too butted up against the increasing number of regulatory ordinances. By encountering not only laws aimed at governing urban life in general, but also governing black people specifically, and experiencing the liberating power of the law, the seeds of a legal consciousness grew among African Americans, including those who never entered a courtroom.

But many did enter the courtroom, and their familiarity of doing so meant that Quock Walker's prosecution against his former owner was no aberration. On April 30 of 1781, according to Walker, Nathaniel Jennison beat him with his "fist and a large stick," and then imprisoned Walker for two

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[114] *A Report of the Record Comissioners of the City of Boston, containing the Boston Records from 1729 to 1742* (Boston: Rockwell and Churchill, 1885), June 1740.

[115] *A Report of the Record Comissioners of the City of Boston, containing the Boston Records from 1742 to 1757* (Boston: Rockwell and Churchill, 1885).

hours. The next day, Walker resorted to the law, charging Jennison with trespass. Jennison did not dispute the facts of the case--probably because in addition to Walker, there were at least two white witnesses. Instead, Jennison expanded the dispute by arguing that because he had married the widow Caldwell, whose previous husband had owned Walker, he was now Walker's owner. Walker countered that his former owner, Caldwell, had long made oral promises that upon his death Walker would be a free man. Caldwell's brother testified that "my brother said always he should be free at 25," Jennison insisted upon his rights as the owner of the since deceased widow Caldwell's property. In an earlier time and place, the case might well have gone against Walker; but in this revolutionary era, his appeal fell on receptive ears.

Overlooked in this well-known case is Quock Walker's legal strategy. He did not go to court for the explicit purpose of obtaining legal freedom. He went to get a measure of protection and to extract some vengance upon Jennison. It is notable that Walker did not file criminal charges of assault upon Jennison: he filed a civil charge of trespass, based on Jennison's kidnapping him and holding him prisoner for two hours. This enabled Walker to do more than have the court punish Jennison for assault with a fine and, perhaps, a brief imprisonment. Walker sued Jennison for £50 in damages--which a jury awarded. Walker was no novice; he knew how to work the legal system to his greatest advantage.

Walker's decision to charge Jennison with trespass instead of assault also speaks to his sense of self--Jennison had done more than beat him, Jennison had crossed a boundary that violated his rights as a freeman. Assault was not unheard of; but to imprison him likely pushed the offense to another level in Walker's mind. Had he charged Jennison with assault, it

would have left the larger question of his legal status unresolved; slaves could successfully prosecute their owners or other whites with assault without changing their status as slaves. By charging Jennison with trespass, Walker forced Jennison to defend himself by arguing that Walker was his slave, and therefore no trespass had occured. This pushed the case from the Court of Common Pleas to the Supreme Judicial Court. In effect, Walker -- perhaps inadvertently and perhaps not -- gave the court the opportunity to expand the dispute to address the issue that was closest to his heart.

His tactic paid off. The presiding judge noted that slavery had been but a custom-- "a usage"--that had "been heretofore countenanced by the Province Laws formerly, but nowhere is it expressly enacted or established." Since, however, "a different idea has taken place with the people of America, more favorable to the natural rights of mankind, and to that natural innate desire of Liberty, with which Heaven (without regard to color, complexion, or shape of noses features) has inspired all the human race." The state constitution, argued the judge, declared "that all men are born free and equal--and that every subject is entitled to liberty, and to have it guarded by the laws, as well as life and property--and in short is totally repugnant to the idea of being born slaves." Therefore, "there can be no such thing as perpetual servitude of a rational creature."[116]

Like Adam Saffin, Quock Walker's identity became intimately tied to the law. Like Adam Saffin, Quock Walker defined himself as free man, and asserted his self-definition by leaving Jennison, believing that the promises of his dead master had freed him. But it took a legal act to formally establish his

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[116] Quotes and reconstruction of events taken from *The Case of Nathaniel Jennison for Attempting to Hold a Negro as a Slave in Massachusetts in 1781. From the Minutes of Chief Justice Cushing, with references to contemporaneous records.*(Boston: John Wilson & Son, 1874).

status. When Judge Cushing declared that "every subject is entitled to liberty," it shaped Walker's identity in two ways: first as a free man, and second as a subject. Defining Walker as a subject gave him certain claims upon the polity; namely, the right to have his status as a free man "guarded by the laws." Defining Walker as a subject tied him to the commonwealth and to its laws, it created a bond between the man who had formally moved from slavery to freedom not by his own claim (saying that his dead masters had made certain promises) or actions (running away), but by the act of the court. This clearly does not deny Walker agency. He initiated the entire proceeding by first asserting his freedom when he left Jennison, and escalated the conflict by charging Jennison with trespass. But the final definition of his status came only with the court's decision, a decision that laid important boundaries between himself and others, especially men like Jennison.[117]

Quock Walker, far from being a pioneer in the pursuit of legally recognized liberty, was one of a long line of black men and women who depended upon the law to manage conflicts. But because Walker's case and others like his came at time when, as T. H. Breen points out, white public opinion had turned against slavery in Massachusetts, the legal conflict could be phrased in a manner that challenged slavery. Eventually, in the spring of 1788, Massachusetts officially abolished slavery. But even that act was tempered, as was much of African Americans' experience with the law. On the same day of the abolition act's passage, another act passed that empowered justices of the peace to expel any black man or woman that the justice deemed as not being a Massachusetts resident. With state-wide legal freedom came

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[117] Ibid. On the importance of the law creating or reinforcing boundaries, see Patricia Williams, "Alchemical Notes: Reconstructing Ideals from Deconstructed Rights," *Harvard Civil Rights-Civil Liberties Law Review* 22 (Spring 1987), 401-433.

legislation aimed at limiting the growth of the black population.[118] Nevertheless, the persistent engagement of black men and women with the law over the course of a century, as plaintiffs as well as defendants, proved to be integral both in providing individuals like Walker a wealth of experience to draw upon, and in keeping the legal personhood of black women and men viable. Just as significantly, this century-long engagement shaped Africans as they entered the Early Republic as African Americans.

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[118] *Massachusetts Legislative Documents 1817-1822*, House No. 46, "Free Negroes and Mulattoes," 14-15. This House document notes that the emancipation was 'official' in Massachusetts when a law was passed on March 26, 1788. The trigger event was when a man decoyed 3 black men onto a ship in Boston harbor, and tried to sell them in the West Indies island of St. Bartholomew) The Govenor of Massachusetts and the French Consulate wrote letters to the Governor of St. Bartholomew, who stopped the sale. The men returned to Boston on July 29, which "was made a day of great rejoicing." The document also comments about the law permitting justices to expel blacks, stating that "the constitutionality of which has been called into question, and which it is well known was passed on the same day as the abolition act of march 1788." Also see Moore, *Notes on the History of Slavery in Massachusetts*, 228.

Chapter Two

Delivering Justice and Shaping Identity: The Law and the Formation of Black Identity in Boston, 1783-1820

In June of 1787, Jack and Silvia Austin sold a plot of land near the center of Boston to Boston Smith. That same day, Smith turned around and sold that plot to Cromwell Barnes, who, four months later, mortgaged half of it to John Brown, Esquire. Brown, however, apparently did not hold up his end of the deal, and in 1791 the property returned to Cromwell Barnes. Five years later, Barnes sold the land to Abel and Chloe Barbadoes, who immediately sold half of it to Prince Freeman. A year and a half later, in the spring of 1798, the Barbadoes mortgaged the remaining half to Mungo Mackay, Jr. Part of the significance of the dealings swirling around this tract of urban real estate is that all of the players but one--John Brown, Esquire--were free people of color.[119]

Jumping ahead fourteen years to what may seem a very different story, a young black woman named Rebecca Freeman testified before a justice of the peace in 1812 against a black man accused and subsequently convicted of theft. Over the next several years, Freeman would go on to appear numerous times as a plaintiff, defendant, and witness in this justice of the peace court. Freeman, like many other black Bostonians--especially women--discovered that her word meant something in this court. She doubtlessly communicated

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[119] From the Thwing Database at the Massachusetts Historical Society. Each deed and transaction is listed in the databse under the individual's name.

her court encounters by telling friends and neighbors of her victories and setbacks. She definitely transmitted her legal experience by bringing other black men and women to court either as her witnesses or by leveling charges, both serious and trivial, against them. In July of 1819, Freeman charged another black woman, Lucy DeCosta, with 'profane swearing' and brought two other black women, Amy Jackson and Harriet Hubbard, as her witnesses. Found guilty, DeCosta had to pay a fine of just over three dollars. Amy Jackson apparently learned the legal lesson well. One month later, Jackson, with Hubbard as her witness, managed to have a white woman thrown in jail after charging her with 'profane swearing.' Black litigants like Freeman and Jackson acquired a certain amount of legal savvy through their court experiences, and learned to expect a decent chance of success against black and white antagonists.[120]

Two threads draw together these two seemingly disparate stories. The obvious one is that nearly all of the major players were African Americans. The second is their participation in Boston's legal system. Both groups knew how the law could work to their advantage. The wheelers and dealers of real estate experienced the law's ability to establish power over a piece of property. Litigants experienced the lower court's ability to deliver justice quickly. Building on more than a century of experience, black Bostonians during the Early Republic era now engaged the law as citizens, heightening an awareness of themselves operating as legal beings in a free society. That heightened

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[120] From the record book of justice of the peace Stephen Gorham, *Criminal Actions from July 19 1812 to November 24 1813*, George Reed v. James Williams, August 3 1812; and *Criminal Actions from June 3 1819 to November 6 1820*, Freeman v. DeCosta, July 3, 1819, and Jackson v Betsey Francis, August 5, 1819. This book and eight others, documenting cases from April of 1806 to November of 1820 (except for one missing book covering October of 1816 through January of 1818) are part of the Adlow Collection in the Rare Books Room of the Boston Public Library. There is no pagination of these record books; all references will be according to date.

awareness continued to nuture a legal consciousness in the midst of a salient period in the formation of an African American identity.

In making this argument, this chapter employs a conceptualization similar to that used by legal scholars David Engel and Frank Munger. They described "the variety of ways in which rights can become active in 'day-to-day' life, even when individuals do not choose to assert them....Rights may may interwoven with individual lives and with particular social or cultural settings even when no formal claim is lodged." The authors also argue that law, culture, identity, and experience act in concert to shape one another. Everyday life experience interacts with the law to shape identity; in turn one's identity influences how individuals use, avoid, and perceive the law. And since identity is in many respects an ongoing negotiation between the Self and the social and cultural environment, use of avoidance of the law "can redefine cultural categories and self-perceptions over time." This study argues that relatively simple and unremarkable legal actions, joined with the unique life experience of a people moving from slavery to freedom in a period of rapid social and cultural change, shaped their identity at a key historical moment.[121]

For free and enslaved blacks in the seventeenth century and most of the eighteenth century, the law provided an arena for participating in a network of relationships with neighbors, selectmen, court officials, jury members, or witnesses, any of whom might be allies or enemies. Black participants took on a variety of roles in those legal relationships as plaintiffs, defendants, property owners, or petitioners, thereby establishing a black presence in the legal arena and confirming the power and utility of the law

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[121] David M. Engel and Frank W. Munger, "Rights, Remembrance, and the Reconciliation of Difference," *Law and Society Review* 30 (No. 1, 1996), 14-16.

for defining blacks as legal beings during northern slavery. The ability to play these roles was severely restricted for southern blacks, but black New Englanders could take center stage in attempting to maintain some measure of control over their daily lives or in pusuit of greater freedom.

And take the stage they did. After the court rulings of the early 1780s freed virtually every slave in Massachusetts, African Americans took on legal roles in increased numbers. Gradual judicial reforms after the Revolutionary War, in part a response to Shay's Rebellion and other expressions of dissatisfaction with legal formalities, made the law even more accessible to ordinary citizens, including African Americans.[122] Playing those roles helped erect and maintain legally defined boundaries around the individual while simultaneously tying the individual to other legal actors -- property deeds, for instance, clearly marked out a physical and legal boundary over which others could not trespass without consequence, and simultaneously defined the property owner by naming the neighboring property owners. Cato Ransom's land in Salem was delineated as lying "westerly on land of Joshua Dodge...northerly on land of Benjamin Crowning" and so on.[123] A black plaintiff who charged someone with 'threatening' invoked the power of the law and justice system to provide protection and create a legal distance between the plaintiff and his or her antagonist. Even though the law could not guarantee that an antagonist would respect that distance, it did enable the plaintiff to identify a behavioral boundary, and gave the individual recourse if that boundary was violated. Like Quock Walker, Adam Saffin, and many

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[122] See William E. Nelson, *Americanization of the Common Law: The Impact of Legal Change on Massachusetts Society, 1760-1830* (Cambridge: Harvard University Press, 1975), 67-88.

[123] From the deed of Cato Ransom's sale of this lot to Nathan Wood in 1795. Contained in the Robert Morris box, located at the Boston Athenæum.

others, free people of color found the law a valuable tool, but by engaging the law, they became subject to and dependent upon its power to define, in part, their social and legal identity.

Most of these men and women left few traces of how they tried to maintain control over their own circumstances during the Early Republic era. Their legal trail is usually short and barely discernible. They left no known written observations of how they perceived their encounters with the law; they did not go on record to articulate in clear and unambiguous terms that their legal experience encouraged a consciousness of individual rights; they did not publicly proclaim a faith in the power of the law to maintain personal boundaries. Nonetheless, their actions hold meaning. Historian Rhys Isaac notes that "the searching out of the meanings that such actions contained and conveyed for the participants lies at the heart of the enterprise of ethnographic history. Actions must be viewed as statements."[124] Grafting ethnographic methodology with the work of legal scholars studying race, rights, and the courts yields understanding of what those statements meant.

Despite the increase in manumissions in Massachusetts before and during the Revolution, and despite the legal demise of slavery in 1783, the law remained oppressive for free people of color in many respects. Only black residents, for instance, risked imprisonment or deportation if unable to prove citizenship.[125] There is also evidence that not all slaves were freed after 1783;

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[124] Rhys Isaac, *The Transformation of Virginia 1740-1790* (New York: W.W. Norton & Co., 1982), 324.

[125] *Massachusetts Legislative Documents 1817-1822*, House No. 46, "Free Negroes and Mulattoes," 14-15; George H. Moore, *Notes on the History of Slavery in Massachusetts*, (New York: D. Appleton, 1866), 228; John Daniels, *In Freedom's Birthplace: A Study of the Boston Negroes* (Boston: Houghton & Mifflin, 1914; reprint, Arno Press and The New York Times, 1969), 26-28. The Massachusetts legislature passed a law in 1788 aimed at controlling "rouges, vagabonds, common beggars, and other idle, disorderly, and lewd persons," and stipulated that

court cases in 1784 and 1786 involved slaves, and the portrait gracing the frontispiece for a 1786 volume of Phillis Wheatley's poetry was engraved by "the slave of Rev. John Moorhead."[126] Nevertheless, black women and men staked their claim to the right to participate in the life of the polity. A few did so through more visible and traditional methods such as the famous freedom petitions drawn up by Massachusetts slaves in the 1770s.

Many other free blacks engaged in unobtrusive exercises aimed not at forcing legal change, but intended to gain some control over their own lives. Through simple and practical interactions with the legal system, free black women and men began to demonstrate certain expectations of how the law applied to them and how they could apply the law. When Scipio and Tobias Locker, two former slaves, ignored orders by the selectmen in 1762 and again in 1766 to perform work for the city under an old ordinance labeled "Act for Regulating of Free Negros," they showed an awareness of where the law broke down--they do not appear to have suffered any consequences for their noncompliance. Having only recently been emancipated, Scipio and Tobias were unwilling to submit their time to labor for others. Meanwhile, they signed deeds to the land that they bought and sold in Boston. John Thurber, freed in November of 1761, bought land less than two weeks later, and a year later was also cited by the selectmen for noncompliance with an order to work on the highways. Both he and the Lockers committed their names as sellers

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any black man or woman had to have proof of United States citizenship from their state of origin.

[126] See Nelson, *Americanization of the Common Law*, 102; Scipio Moorhead, John Moorhead's slave, refered to in the Thwing database. It is possible that Scipio had done the work while a slave, previous to the legal eradication of slavery, and was a free man in 1786 when he received credit for his work. It seems unlikely, however, that Scipio would have still been refered to as a slave and unlikely that he would have been comissioned to do the work several years before publication of the volume.

to deeds declaring "KNOW all Men" that they "have good right to sell and convey" a plot of land, and as buyers to documents stating that they were protected from the "claims and demands of any persons." This language denied the ability of others to make claims on the property of those who had once been property. No doubt this sense of power, this sense of control, was not lost on John Thurber or the Lockers. Their refusal to comply with the selectmen's orders may have very well been fed by this sense that there were some things that they had a right to control--such as their property and their labor.[127]

The Lockers were not the first black property owners in Boston; Angola, slave of Robert Keayne in the seventeenth century, received a 50 square foot plot of land from in 1673 from Governor Richard Bellingham as a reward for saving the Governor's life. Angola was probably a free man when he acquired this property, as Keayne, who had died several years previous, left a will stipulating Angola's manumission. Angola was preceded as a black property owner by his acquaintance, Bus Bus, a free black who owned a house and a small plot in 1656. Even enslaved Africans could own property in Massachusetts, though at some point it apparently became accepted legal practice that they could buy or sell property only with the consent of their masters.[128]

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[127] John Thurber's and the Locker's deeds and selectmen's orders in the Thwing Database. The Database, however, does not contain the deeds in their entirety. The legal language of the deed is taken from the 1795 deed of Cato Ransom, a black man who lived in Salem, Massachusetts. Scipio , who initially kept the last name of his master Capt. John Fayerweather, was freed less than a year before the 1762 order, and Tobias five years before Scipio.

[128] In 1816, the Supreme Judicial Court noted that Caesar Elisha, a seventeenth-century slave, "could acquire no property, nor dispose of any without the consent of his master." From *Judicial Cases concerning American Slavery and the Negro*, ed. Helen Tunnicliff Catterall (Washington, D.C.: Carnegie Institution of Washington, 1936), vol 4, 493.

The first significant numbers of black Boston property owners do not appear in the records until the Lockers' time, coinciding with an increase in manumissions by Massachusetts slaveowners. From 1761 through the end of the Revolution, seven black Bostonians signed eight deeds; between 1783 and 1800, twenty-one free blacks signed twenty-two deeds. This may seem a small number for building claims of a burgeoning legal consciousness among African Americans. But there were less than 1000 African Americans--including children--in Boston before the Revolution and only a hundred more by 1800. As people of some means, all of the property owners, several of whom had trades, occupied influential positions in the black community. As they interacted with other black Bostonians, whether through passing along their own experiences on how to secure property or deal with similar types of contractual relationships, their evolving sense of self contributed to the forging of a free black identity. A few eventually provided leadership in the black community. Scipio Dalton, who bought property in 1799, became vice-president of Boston's African Humane Society in 1818. Abel and Chloe Barbadoes' son James emerged as one of the Boston's nineteenth century abolitoinists who also pushed to expand civil rights, and their daughter Clarissa married another prominent Bostonian civil rights activist.[129]

The 21 property owners include a handful of wives, for whom participating in this simple legal act held a deeper significance. Married black women in an age of emancipation were caught in a legal purgatory that has

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[129] Scipio Dalton and the by-laws of the African Humane Society are in a small booklet labeled *The By-Laws, rules and regulations, of the African Humane Society* (Boston: 1820). Contained in the Robert Morris Box at the Boston Athenæum. To the best of my knowledge, no other record exists of this previously unknown organization. The Barbadoes family is well documented in Franklin A Dorman, *Twenty Families of Color in Massachusetts, 1742-1998* (Boston: New England Historic Genealogical Society, 1998). Population statistics taken from George A. Levesque, *Black Boston: African American Life and Culture in Urban America, 1750-1860* (New York: Garland Publishing, 1994), 79, 86.

been little appreciated. For enslaved women, emancipation meant moving from a status of being legal property to being legally as free, but as a married woman, their legal personhood was denied. Married women had no right to own property.[130] Nonetheless, some black women demonstrated an awareness of both the limits and the utility of the law, and gained some amount of control over their own lives by obtaining property. In 1798 Chloe Spear, African-born in 1750 and sold as a child in Boston, initiated the purchase of an unfinished house on White Bread Alley in Boston. Knowing that she could not legally buy the house and lot in her own name, Chloe had to first get her husband Cesar to agree to the purchase, "cause he de *head*." "Cesar, house to sell; I wish we buy it," Chloe declared. Cesar, taken aback, responded with "I no got de money, how I buy a house?" His thriftier wife, however had managed to save enough to meet the $700 purchase price. After the Spears obtained the deed, Chloe mapped out a plan to secure their investment and enhance their independence. Since the house was unfinished, the Spears would live in the poorest part of the house, and rent out the rest. Her intent was to use the rent money for improvements, enabling them to charge higher rents, thereby providing for their future. Her plan must have met with some success; when Chloe died in 1815, she left behind a house on one Boston's main thoroughfares, as well as $500 to a grandson and other smaller bequests.[131] Black women like Chloe experienced the confining power of the law throughout their lives--through being the legal property of another and as a wife 'covered' as a legal being by her

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[130] Nelson, *Americanization of the Common Law*, 103.

[131] *We Are Your Sisters: Black Women in the Nineteenth Century*, ed. Dorothy Sterling (New York: W. W. Norton & Co., 1984), 93. Sterling reprints an excerpt from "A Lady of Boston" who wrote a *Memoir of Mrs. Chloe Spear*. The Spears are also in the Thwing database.

husband--as well as its ability to empower by outlining the Spears' right to own and improve property as they wished for their own benefit.

Signing deeds was a fairly routine act. But for black men and women, some of whom had recently been enslaved and others who had relatives or friends who had been slaves, this simple act, made during an age of slavery and emancipation, must have carried a different meaning than it did for white property owners. Some were probably more conscious than others of the significance of these legal actions. Whatever their level of awareness, signing deeds was one legal act that delineated specific rights. Rights, as Patricia Williams has argued, have the power to provide autonomy and distance from potential oppressors. Rights also create meaningful boundaries that enable the holder to define when an intrusion occurs. The ability to commit one's name to a property deed did more than establish geographical boundaries; it also helped construct boundaries around a sense of self by defining the individual as a legal and social being with certain rights.[132]

White Americans understood the importance of maintaining those boundaries. The freedom to possess property and the expectation that the rule of law would protect legal title was a specific kind of liberty--the liberty of secure possession--that colonials had long accepted as a normative part of civil society. This kind of liberty stemmed not from the particular form of government, "but rather from specific arrangements that in time became institutionalized [and] were concrete and verifiable."[133] By entering into those institutionalized arrangements, free black property owners grounded

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[132] See Patricia Williams, "Alchemical Notes: Reconstructing Ideals from Deconstructed Rights," *Harvard Civil Rights-Civil Liberties Law Review* 22 (Spring 1987), 401-433.

[133] Joyce Appleby, *Capitalism and a New Social Order: The Republican Vision of the 1790s* (New York: New York University Press, 1984), 18.

their claim to one kind of liberty that had become central to a developing American identity.

The law, then, had something of value beyond emancipation to offer black men and women like the Lockers and Chloe Spear. Individual manumissions and general emancipation in 1783 broadly defined black women and men as legally free beings; deeds helped further define black property owners as legal beings by creating specific boundaries protecting a fundamental liberty.

This in turn influenced black identity formation. The formation of an African American identity was shaped in part by simple, practical acts that placed them in a legal context, a context in turn tied to a broad constellation of ideologies in the Early Republic that intertwined liberty with independence, independence with citizenship, and citizenship with what it meant to be an American. Joyce Appleby describes how the growth of commercial capitalism in Britain and the colonies had undermined the traditional Old World social and political hierarchical system, and how a more subversive ideology of liberty bloomed as individuals engaged in unregulated market relationships for their own and society's mutual benefit. The market became the driving force legitimizing the pursuit of self-interest and, combined with the impact of the French Revolution, presented a vision of men freed from the chains of custom. Jeffersonians eventually seized on this vision to promulgate a liberal identity of Americans as free, autonomous, and independent beings.

The law--which, as Tom Paine had declared in *Common Sense*, was king in America--was the central mechanism undergirding the liberties of these independent Americans and ensuring their free participation in the market. Seemingly mundane acts like signing deeds or procuring badges that protected one's vocation outlined the legal boundaries of liberty over which

others could not trespass. Defining these boundaries in effect helped secure liberty to "the enjoyment of legal title to a piece of property or the priviiege of doing a particular thing without fear of arrest or punishment."[134] Former slaves entered into this security when they were able to sign deeds, make wills, or garner legal protection of their vocation as free African Americans. When Tobias, a slave of John Cookson was employed as a chimneysweep in 1716, Boston's selectmen granted the license to Cookson, not Tobias. But when Juba Andrew, a free black man in 1787, obtained Sweepers Badge No. 2 from the selectmen "to sweep Chimnies in the Town," his vocation became protected by the law and publicly affirmed his rights as a citizen to earn his own living as a chimney sweep.[135] Andrew's legal affirmation stood in contrast to the selectmen's punishment just four days previous of two white sweeps "charged with taking illegal Fees" who were subsequently forbidden to practice their vocation in Boston. Just as engaging in commerce structured Americans' self-conception as autonomous and equal beings, engaging in legal actions structured free blacks' self-conception as legal beings with equal citizenship rights. Wills, contracts for labor, licenses to work, are all examples of simple actions that established specific rights to do something and limited the ability of others to infringe on those rights. All of these legal acts contributed to defining a sense of self during an era of transition.

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[134] Thomas Paine, *Common Sense*, ed. Isaac Kramnick (New York: Penguin Books, 1985), 98; Appleby, *Capitalism and a New Social Order*, 17.

[135] See Paul A. Gilje and Howard B. Rock, "Sweep O! Sweep O!': African-American Chimney Sweeps and Citizenship in the New Nation," *William and Mary Quarterly* 57 (July 1994), 507-538. Tobias is in the Thwing Database; Juba Andrew's liscensing and the punishment of the white sweeps appears in *A Report of the Record Commissioners of the City of Boston, Containing the Selectmen's Minutes from 1787 through 1798* (Boston: Rockwell and Churchill, 1896), Nov. 12, 1787. The Boston Town Records document several other black chimney sweeps applying for and obtaining badges; Cesar Capen, for instance, obtained Badge No. 11 in 1794. Ibid., Nov. 5, 1794.

Deeds and wills also affirmed black community. Despite black-white interaction being the daily norm, and despite being less than 5% of Boston's population, black property owners frequently sold land to other African Americans.[136] Black property owners also commonly bought property adjacent to other African American dwellings, thereby physically building a black community. In every will I have found thus far, black testators named other African Americans as executors. At times both forms of legal activity converged: in 1780, Cesar Wendell, a free black property owner, appointed another free black man, his "Worthy and Honored Friend" Jack Austin, executor of his will and recepient of all of his personal and real estate. Later that year, Wendell died. Austin, a pewterer and shopkeeper, initiated the exchange of property mentioned in the opening. On occasion, the intent to affirm relationships was explicit: in 1839, the widow Remember Ransom, shortly before her death, sold her lot for one dollar out of "the love and affection I bear to John Brooks, of Salem." Though the intention may not have always been to build 'community', these legal acts formally bound black women and men to one as a free people that had not been possible as an enslaved people.[137]

Black identity was reinforced by legal transactions that defined boundaries while engaging African Americans with whites on a field where

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[136] Over half of the deeds involve transactions between African Americans, and the number may be higher. Some of the individuals that appear may have been African American but, since they do not appear in any other records that identify them as such, it is not yet possible to be certain. On black-white interaction and residential living patterns in urban areas, see James Oliver Horton and Lois E. Horton, *In Hope of Liberty: Culture, Community, and Protest among Northern Free Blacks, 1700-1860* (New York: Oxford University Press, 1997), 96-100; Henry L. Taylor, "On Slavery's Fringe: City-Building and Black Community Development in Cincinnati, 1800-1850," *Ohio History* 95 (1986), 5-33; and Leonard P. Curry, *Free Blacks in Urban America* (Chicago: University of Chicago Press, 1981).

[137] Cesar Wendell appears in the Thwing Database; Remember Ransom's deed is in the Robert Morris box at the Boston Athenæum.

the same rules applied to each participant. Legal transactions also engaged African Americans with one another in new ways. Far from being static or simply a matter of maintaining distance from white Americans, black identity was dynamic and a matter of engaging whites and blacks in multiple arenas. The law provided perhaps the only arena in which black men and women--though for women it was sometimes indirectly, as in the case of Chloe Spear--could forge equitable relationships with whites, while simultaneously reinforcing connections with other African Americans.

While deeds and wills demonstrate a more purposeful and harmonious cooperation that indirectly created or reinforced social ties through formal legal mechanisms, justice of the peace records reveal a more contentious and complicated picture of community and identity. Here, where the law manifested itself through a relatively informal and accessible court, an oppressed people found that at least one of the articulated ideals of a professed democratic and egalitarian republic--equality before, and access to, the law--could at times come close to being realized.

In early nineteenth century Boston, the path to justice had few obstacles. Anyone who perceived themselves as a victim of an alleged crime, the first step was getting a constable to arrest the perpetrator. George Reed, the constable who made the arrests in many of the cases involving African Americans, was an easily identifiable and familiar figure for many black Bostonians. Standing six feet tall, wearing a "broad brimmed high crowned felt hat, [and] a bright spotted red bandana," Reed's daily patrol took him through the streets of Boston's sixth ward, which had the highest proportion of black residents. He became so familiar that one chronicler of Boston remembered black mothers invoking the specter of "Old Reed comin' to gobble yis up" to keep their children in line. One account demonstrated how

easy it was to engage Reed's services. Around 1830, a customer passed counterfeit money to a boy working as a clerk in a shoe store. The boy showed the storeowner the counterfeits, who asked his young clerk if he knew 'Old Reed.' The clerk, thinking "what manner of boy did not know him," ran to the Old Court House in the center of Boston, found Reed, who immediately followed the boy back to the shoe store. Though the suspect eluded capture for three more days, this account indicates how close at hand justice lay: common folk knew the constable, knew where to find him, and knew that his response was likely to be immediate. In the same way, they knew the justice of the peace.[138]

The people of Massachusetts had long been in the habit of resorting to the justice of the peace to resolve civil and criminal disputes. In keeping with English law and custom, "Puritan reformers emphasized the role of the justice of the peace, for it, above all other local legal institutions, had weathered the effects of social and political change and had demonstrated a power and a flexibility lacking in the others....Puritan leaders placed great responsibility on the justice of the peace."[139] During the latter half of the seventeenth century, as the church and the town meeting proved to be inadequate venues to handle the wide range of disputes cropping up in a society transitioning to new social and economic environments, the courts "helped establish and enforce a 'totality of norms' to regulate the relationships of private individuals."[140] Many New Englanders became

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[138] George Hugh Crichton, *Old Boston and its once familiar faces: sketches of some odd characters who have flourished in Boston during the past fifty years* (unpublished manuscript, 1881). Located at the Boston Athenæum.

[139] David Thomas Konig, *Law and Society in Puritan Massachusetts: Essex County, 1629-1692* (Chapel Hill: University of North Carolina Press, 1979), 5.

[140] Ibid., 69.

accustomed to using the courts to manage their conflicts, making litigation and the law an integral part of maintaining and interpreting social order as "standards of neighborliness had to be demanded and asserted in court." While the law could specify what constituted a crime, it "could not set standards of daily interpersonal activity which had to be tested and established in court." People expected each other to conform to what the court affirmed as normative behavior; anyone who did not could expect to find themselves in front of a justice of the peace.[141]

This had been the intent of the English court system. More serious crimes were generally dealt with by higher courts, while the justices of the peace were expected to handle the sort of persistent disruptions that might regularly plague a community. Justice needed to be easily available on a local basis in order to ensure social order. Hence, justices of the peace could hear cases and deliver verdicts individually in their own homes or as a group during one of the quarterly sessions in their own county. They were given the authority to punish through corporal punishment, imprisonment, or fines and sureties. They had the authority to act as a constable, accusing and arresting suspected violators. Conviction in a justice of the peace court was meant to be "an easy prompt matter upon the testimony of one or two witnesses."[142] They were protected in English, and later in American, law against countersuits--for instance, from being accused of trespassing if they had gone on another's property to order an arrest. The authority and duties of the justice of the peace remained fairly consistent throughout the

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[141] Ibid., xiv-xv. William Nelson also notes that the courts became the primary method of dispute resolution. See William E. Nelson, *Dispute and Conflict Resolution in Plymouth County, Massachusetts, 1725-1825* (Chapel Hill: University of North Carolina Press, 1981).

[142] Konig, *Law and Society in Puritan Massachusetts*, 16; and Nelson, *Americanization of the Common Law*, 15.

eighteenth century and into the nineteenth. Late in the eighteenth century, the jurisdiction of justices of the peace actually expanded somewhat, as post-Revolutionary reformers sought to make the judicial system more accessible and efficient. During the first two decades of the nineteenth century, as Massachusetts bounced judicial responsibilities from one court to another in a spasm of attempted reforms, one constant was the continued jurisdiction of the justice of the peace court over daily neighborhood civil and criminal conflicts.[143]

That steady connection with the life of the neighborhood meant the justice of the peace was often a natural recourse for managing conflict. The justice of the peace that black Bostonians resorted to most frequently adjudicated cases in the new Suffolk County Court House. Completed in 1812, the Court House was a rather imposing granite structure with a front lawn in the heart of the city, with space and style that communicated power and authority. The initial complaint, however, was probably made to the justice in his office in the Tudor building, at the end of a row of buildings facing the back of the Court House, and spoke less of power and more of the

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[143] Michael Stephen Hindus, *Prison and Plantation: Crime, Justice, and Authority in Massachusetts and South Carolina, 1767-1878* (Chapel Hill: University of North Carolina Press, 1980); Nelson, *Americanization of the Common Law*, 166. Comparison of three manuals written as guidebooks for justices of the peace indicates that even as late as 1847, the justice was expected to fulfill virtually the same function. While these manuals give no suggestion as to how the types of cases brought to a justice of the peace may have changed over time, the justice of the peace records that I use here clearly indicate a pattern consistent with this description of the justice's intended function of dealing with day-to-day disputes ranging from forgery to assault to AWOL sailors. The manuals are Samuel Freeman, *The Massachusetts Justice: Being a Collection of the Laws of the Commonwealth of Massachusetts, Relative to the Power and Duty of Justices of the Peace* (Boston: Isaiah Thomas & Ebenezer T. Andrews, 1802); Rodolphus Dickinson, *A Digest of the Common Law, the Statute Laws of Massachusetts, and of the United States, and the Decisions of the Supreme Judicial Court of Massachusetts, Relative to the Powers and Duties of Justices of the Peace, to which is subjoined and extensive Appendix of Forms* (Deerfield, Mass: John Wilson, 1818); and John C Davis, *The Massachusetts Justice: A Treatise upon the Powers and Duties of Justices of the Peace. With Copious Forms* (Worcester: Warren Lazell, 1847).

ordinary daily affairs of a growing city. This dichotomy epitomized the justice of the peace: his position in the judicial hierarchy reconciled what was intended to be an image of the power and majesty of the law with an image of egalitarian justice and accessibility in the Early Republic.[144]

Once a plaintiff lodged a charge with either the justice or the constable, the constable escorted the accused into the courtroom, where the defendant's name was called and charges read aloud. For those new to the court, it could be an intimidating experience; one white defendant charged with stealing molasses remembered the command to plead guilty or not guilty "came forth in a nerve destroying voice."[145] Part of the intimidation must have stemmed from the powerful position held by the justice of the peace. Though a minor judicial figure, he had a fair amount of autonomy in early nineteenth century Boston--enough autonomy, in fact, to worry the selectmen, who expressed concern that too much power was concentrated in the justice of the peace and that the office could be easily abused. The long-standing practice of providing the justices' salaries from the fines and court fees imposed by the justices themselves was a primary reason for the selectmens' fears. In an attempt to "give the justices of the peace an opportunity to exercise their offices in a

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[144] Photographs of the Court House and the Tudor building in *Old Boston in Early Photographs, 1850-1918: 174 Prints from the Collection of the Bostonian Society* (New York: Dover Publications, 1990), 11, 37. According to an 1821 tax list, Stephen Gorham's office was at the Court House on Court St. Likewise, the *Boston Directory* lists his office at 6 Court St. up to 1809. The 1813 Directory, however, has Gorham's office in the Tudor building. It makes sense that he would have relocated to be immediately adjacent to the new Court House. The tax list may have been noting the general location, whereas his office in is recorded as being in the Tudor building in the 1813, 1816, 1818, and 1820 directories. Tax list in *At A Legal Meeting of Freeholders and Other Inhabitants of the Town of Boston...a correct list stating the amount of Real and Personal Estate on which the Inhabitants of the Town have been valued, doomed, assessed and taxed for the year 1821* (Boston: True & Green, Merchant's Hall, 1822). Location of the court house and jail also determined from John G. Hales' 1814 map of Boston, which, along with the tax list and Boston Directory is located in the Massachusetts State House Library.

[145] Crichton, *Old Boston and its once familiar faces...*

manner more publick and responsible", the selectmen proposed establishing a Police Court, composed of three justices of the peace with fixed salaries. It was not until 1822, seven years after the selectmens' proposal and the same year that Boston moved from the status of town to incorporation as a city, that the Police Court began functioning. Before that, a significant amount of power resided in the hands of the justices, who could dispatch the accused to jail on the spot or levy fines that demanded immediate payment. Recognizing this, black Bostonians began to use this power as a tool in managing conflicts across and within racial boundaries.[146]

The justice of the peace court also wielded a significant amount of local power in part because of the unique space it occupied in the legal system. Barbara Yngvesson and Lynn Mather have described how even in 'simple' or 'tribal' societies, institutions devised for dispute resolution may be characterized by restricted participation, specialized language and procedures, and several layers of organization for dispute resolution. More complex or modern societies nearly always exhibit these characteristics in their court systems. In both types of societies, "these contextual features often allow for those of higher social status to dominate in the handling of individual disputes and, in so doing, to reinforce broader patterns of social order." Similarly, the development of an "official language of law increases the power of certain political interests by restricting access to the disputing forum, by defining the kinds of disputes which can be placed on the agenda of the forum."[147] The court system in Boston, a focus of reform during the first few

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[146] *A Volume of Records relating to the Early History of Boston containing Boston Town Records, 1814-1822* (Boston: Municipal Printing Office, 1906), 40-41; Theodore Ferdinand, *Boston's Lower Criminal Courts, 1814-1850* (Newark: University of Delaware Press, 1992), 34.

[147] Barbara Yngvesson and Lynn Mather, "Courts, Moots, and the Disputing Process" in *Empirical Theories about Courts*, ed. Keith Boyum and Lynn Mather (New York: Longman,

decades of the nineteenth century, exhibited these characteristics to varying degrees. The lowest court, however, was not highly specialized, and while it may have reinforced the basic power structure, the justice of the peace court remained highly accessible and minimized those 'contextual features' that facilitated domination by litigants of higher status.

This does not mean the significance of status was entirely mitigated; a higher proportion of black defendants were penalized when prosecuted by white plaintiffs than were white defendants when prosecuted by black plaintiffs. Also, a black defendant stood a greater chance of being convicted when the plaintiff was white than when the plaintiff was black. Here the justice of the peace court, at the bottom of the court hierarchy, did indeed act to reinforce one of the most fundamental patterns of social order-- white over black.

Table 1

Success rates in interracial court cases, 1818-1820

	# of cases	charge proved	not proved	Conviction rate
Black plaintiff-white defendant	68	40	28	59%
White plaintiff-black defendant	75	60	15	80%
		Conviction rate, all cases --		70%[148]

1983), 73; and Yngvesson and Mather, "Language, Audience, and the Transformation of Disputes," *Law and Society Review* 15 (1980-81), 796.

[148] 'Conviction' may not be the most accurate term. Included in this term as I use it in this chart are all adverse verdicts against a defendant. Certain charges, such as threatening, apparently fell into a different category, as Gorham did not fine defendants he deemed guilty, but ordered defendants to provide a surety, obstensibly for the purpose of keeping the peace for a unstated period. When defendants could not or would not provide this surety, however, they went to jail, just as defendants did who did not pay fines when other types of charges, such as assault, were 'proved.'

Race, then, appears to have been a factor in this court. Stephen Gorham, the justice of the peace in all of these cases, may or may not have been conscious of his predilection borne out in the statistics. The 'haves' do better in court for a number of reasons, and the higher conviction rate that white plaintiffs attained against black defendants could be explained by a number of factors in addition to race.[149] When black defendants were brought into court by white plaintiffs, it was for theft more than an any other charge, and these plaintiffs tended to be merchants or other men with occupations of potentially middle class status. Though class may have worked more in their favor than race, statistics suggest that it was not a huge advantage: between 1808 and 1820, against black defendants, white merchants won 85% of their cases, while white traders and laborers won 75%. More importantly, it is doubtful that black Bostonians were acutely aware of this statistical bias. They did, after all, experience more success than failure against white defendants. And some black defendants did succeed in obtaining judgments of 'charges not proven'-- Lucretia Hunt did so in 1818 despite being charged with theft by a jeweler and a cooper who each had witnesses. Her experience surely heightened Hunt's awareness, and that of her friends, that the law could protect as well as prosecute. Twenty percent of black defendants charged by white plaintiffs were acquitted- and the general acquittal rate was around 30%, not such a huge disparity that people at that time, from their limited perspective, without the benefit of statistical analysis, would have necessarily perceived this as a glaring inequity.[150]

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[149] See Marc Galanter, "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change," *Law and Society Review* 9 (Fall 1974), 95-148.

[150] Gorham, *Criminal Actions from Feburary 2 1818 to June 2 1819* Hutchinson v. Hunt and Clapp v. Hunt, Feburary 26 1818.

Black litigants also likely felt the court was not grossly inequitable because the system of private prosecution imparted some sense of control over one's fate. Though the courts became more formalized as urbanization accelerated in early nineteenth century Boston, a simple process of private prosecution ruled the day in the justice of the peace court. The victim-turned-plaintiff opened the case by stipulating the charge and offering proof and having any witnesses testify. The defendant then cross-examined the plaintiff and witnesses, after which the plaintiff could question the defendant. Each was allowed a final rebuttal. The justice then rendered his decision.[151]

The looseness of the legal system proved to be a good match for the needs and aims of black litigants. They could choose a justice of the peace likely to be sympathetic, and the process of getting justice was informal enough that even poor black women, who stood at the bottom of the social and economic ladder, could press charges, argue their case as plaintiffs or defendants, secure witnesses, and enhance their chances of succeeding in court without any formal legal help.[152] The mechanics of the legal system--legal terminology, arrest procedures, enforcement mechanisms, and the appeal process--were fairly simple in Boston during the Early Republic era. This simplicity no doubt appealed to many African Americans, whose opportunities to resolve disputes and maintain order through other public means were diminishing in the early nineteenth century.

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[151] John C Davis, *The Massachusetts Justice*, 69. Rodolphus Dickinson's *A Digest of the Common Law*, as well as Samuel Freeman's *The Massachusetts Justice*, give similar descriptions.

[152] On the minor judiciary and private prosecution, see Allen Steinberg, *The Transformation of Criminal Justice: Philadelphia, 1800-1880* (Chapel Hill: University of North Carolina Press, 1989); and Roger Lane, *Policing the City: Boston, 1822-1885* (Cambridge: Harvard University Press, 1967), 1-8.

The trend toward using the lower courts coincided with the trend towards formalizing popular political participation. In Revolutionary America, mob action often functioned as one means of political expression by ordinary folk. On several occasions, when the protest expressed shared values, these mobs were interracial--black and white urbanites, for instance, at times joined forces against neighborhood brothels. While mob actions continued into the nineteenth century, voting and office-holding opened up new and safer avenues for ordinary white men to participate in politics. But African Americans were increasingly marginalized in political affairs as northern states persistently sought to remove or limit black voting rights. At the same time, mobs in the north took on an ominous character. Though nineteenth century interracial mob actions were not unheard of, white working class mobs more frequently targeted black neighborhoods. In 1823, when Boston's Mayor Quincy led raids against brothels, he focused on the black section of Beacon Hill. Squeezed out of traditional modes of public expression against undesirable neighborhood elements, many black men and women appear to have increasingly turned to the lower courts to reinforce shared values.[153]

To some extent, this turning to the courts also replaced cultural forms of managing disputes that had existed during slavery. Election Day and Pinkster festivals in New England had appointed black governors and kings who crowned an "informal system of black government." Whites had sanctioned their power to adjudicate disputes among slaves. After emancipation, however, this system gradually disappeared. Historian Shane

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[153] Gordon Wood, *The Radicalism of the American Revolution* (New York: Vintage Books, 1991), 287-305; Horton and Horton, *In Hope of Liberty, 162-170*; also see Paul A. Gilje, *The Road to Mobocracy: Popular Disorder in New York City, 1763-1834* (Chapel Hill: University of North Carolina Press, 1987).

White has noted that by 1820, black festivals occurred only sporadically, and African Americans in the north developed more public and political means, such as parades, of displaying themselves "as both African Americans and citizens of the new nation." The lower court, while perhaps revealing a more contentious side of black life, had advantages over parades as a forum to exercise public citizenship: going to court was not dependent on the black elite's organizing, it was not occasional, and it was not restricted to men. Permitted no prominent public role in the parades, black women became leaders in the black court experience and were integral to the growth of a legal consciousness as African Americans came to use the lower court with increasing frequency during the second decade of the new century.[154]

Any possible rise in the crime rate does not adequately explain this increase. Cases not settled at the justice of the peace level went to the Municipal Court, and the number of criminal cases adjudicated by that court did almost double between 1814 and 1816. But the increase was due almost entirely to a rise in cases involving property crimes, while assaultive crimes declined steadily from 1814 to 1820.[155] African Americans litigants typically appeared in the justice of the peace court as plaintiffs or defendants in cases dealing with assault or threatening; property crimes represent less than 13% of the cases involving African Americans, who were generally defendants in property cases. In short, any rise in the crime rate--if indeed there was such an increase--can at best explain only a small portion of black Bostonians' increased usage of Stephen Gorham's court.

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[154] William D. Piersen, *Black Yankees: The Development of an Afro-American Subculture in Eighteenth Century New England* (Amherst: University of Massachusetts Press, 1988), 134-135; Shane White, " 'It Was a Proud Day': African Americans, Festivals, and Parades in the North, 1741-1834," *Journal of American History* 81 (June 1994), 15-16.

[155] Ferdinand, *Boston's Lower Criminal Courts, 1814-1850*, 135-148.

Table 2

Frequency of J.P. court appearances by black Bostonians

Year	# of black plaintiffs	# of black defendants	#of total appearances	average # of appearances per month
1808	20	55	75	6.25
1809	21	60	81	6.75
1810	24	53	77	6.4
1811	36	43	79	6.6
1812	40	76	116	9.7
1813	39	75	114	9.3
1814	39	56	95	8
1815	29	55	84	7
1816 (9 months)	31	59	90	10
1818 (11 m.)	86	91	177	16.1
1819	89	107	196	16.3
1820 (10 m.)[156]	72	63	135	13.5

The data pointing towards an uneven yet undeniable increase in is drawn from nine record books of only one justice of the peace. Black Bostonians did appear before other justices of the peace, made evident by occasional references in writs, dockets, and summaries of cases that reached the Municipal Court. It seems probable, however, that Gorham was the

[156] Data assembled by counting each appearance of a black litigant in the criminal record books of Stephen Gorham. By my count, black Bostonians made 1319 appearances in 877 cases.

justice of choice for most black Bostonians, due to his central location and, especially after 1817, the high numbers that came to him. Between February of 1818 and the end of October in 1820, 350 African Americans appeared in 508 cases--this out of an adult population of about 1300.[157] Unfortunately, the nine record books are thus far the only extant records that consistently document the court activities of any Boston justice of the peace. And though these nine record books give a minimum of detail--names, charges, fines, if the defendant complied or had to be jailed for nonpayment--Gorham typically recorded occupations for white male litigants, marital status for white female litigants, and race for African American litigants. A typical page in Gorham's book appears as follows (cases used here did not appear together):

[157] *The Fourth Census of the United States,* 1820.

Figure 1

Reproduction of Gorham's record book

Offense & Officer	Complainant	Defendant	Fines & Costs	Proceedings
1819 th July 13 Assault constable E.V. Glover	Thomas Williamson of Boston Cabinetmaker Witness John West	William Johnson of Boston blackman		Tho' Williamson charges that Wm Johnson beat him on this day... defendant pleads not guilty, charge proved. $1 plus cost, defendant refused and comitted to goal.
1819 th July 13 Theft	James Gould of Boston Col man, Trader Witness Mary Jane Sewall	Lydia Raney of Boston Wife of		
1819 st July 21 absent from sch without leave constable	Capt. Thomas C. Stevens Master of the Schooner Laurel	John W. Smith jr. blackman & cook		
1819 th October 5 Profane Swearing	Rebecca Freeman of Boston blackwoman Witness John Winthrop	Mary Williams of Boston Col woman		

Though these books do not reveal the details of the disputes or of what transpired in court, Gorham's fairly regular identification of black litigants--uncommon for similar records--permits useful quantitative analysis.

Town records and other sources indicate that the first record book, which begins in June of 1806, marked the beginning of Gorham's tenure as a justice of the peace. Previously, Gorham had served as an Overseer of the Poor, and may have had some contact with members of Boston's black community. Any such familiarity, however, did not necessarily mean African Americans were immediately attracted to his courtroom; for the first year and a half of his service as a justice, only 8 cases before him involved

black litigants, and none with black plaintiffs charging white defendants. When Gorham saw a black face in his courtroom, it was typically a defendant charged with theft, or an occasional runaway slave dragged to court and ordered by Gorham to be held until the slaveowner could procure transport back to the South. It would be over two years before Gorham adjudicated a case with a black plaintiff and a white defendant, when Trim Tyng and three black witnesses managed to have a white man tossed into jail for threatening Tyng.[158]

Black plaintiffs, especially black women, were responsible for the increase in black litigants. While free men of color used the court as plaintiffs against their fellow black Bostonians about twice as frequently as they did against whites, free women of color such as Rebecca Freeman demonstrated a proclivity to pursue justice almost exclusively against other blacks. Rebecca Freeman appeared on 13 occasions, five times as a plaintiff, five as a defendant, and three times as a witness. All of the cases but one were against African Americans. Eighty-six percent of all black female plaintiffs charged other African Americans. The number of black defendants brought into court by whites remained fairly constant over a thirteen year span, while the total number of black defendants rose due to black prosecution of other African Americans.

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[158] Tyng v. McDaniel, August 5 1808 in Gorham, *Criminal Actions from July 16 1807 to November 18 1808.*

Table 3

Prosecuting Black Defendants

Year	# of black defendants	% of black def. charged by blacks	%of black def. charged by black females
1808	55	22%	7%
1809	60	30%	7%
1810	53	47%	32%
1811	43	51%	9%
1812	76	45%	21%
1813	75	43%	28%
1814	56	64%	29%
1815	55	40%	24%
1816 (9 months)	59	42%	22%
1818 (11 m.)	91	68%	53%
1819	107	68%	51%
1820 (10 m.)	63	79%	52%

Ultimately, it is difficult to pin down causal factors that lead growing numbers of African Americans to the justice of the peace court. The constriction of opportunities to manage conflict and exert control within their neighborhoods no doubt pushed more black Bostonians to a forum that had long been a part of New Englanders' dispute resolution. In addition, there may have also been a simple human force behind the substantial jump in number of appearances from 1818 to 1820. From 1806 to 1816 the number of women who appear more than once as plaintiffs varies from 0 in 1807 to a

high of 14 in 1814. In 1818, the number of appearances by female plaintiff repeaters jumps to 35 in 11 months. Many of these women, some of whom also came to court as plaintiffs before 1818, can be tied to other black litigants or witnesses, who in turn can be tied to still others. In short, a relatively small number of black women who demonstrated a proclivity for going to court introduced others to the court by charging them with various offenses or enlisting them as witnesses. As leaders in the black court experience, these litigious black women were directly and indirectly responsible for constructing spiraling networks of black litigants who became familiar with the utility of the justice of the peace court, broadening the realm of court experience in the black community.

Occasionally sources make evident how these networks were constructed within the black community. In January of 1816, William Jackson managed to have another black man jailed after charging him with assault. Jackson's witness was his wife Nancy. Nancy Jackson appeared ten days later as a witness for Jane Robins, who succeeded in having another black woman, Elsa Johnson, thrown in jail after charging her with threatening. Robins appeared three more times over the next three years in this justice of the peace court, twice as a defendant on the same day and losing each case, and finally as a successful plaintiff. Her neighbor, John Francis, pressed assault charges against a white mariner in 1818 and against a black man in 1819. It is easy to imagine Nancy Jackson, having served as her husband's witness in his successful prosecution, being present when an argument broke out between Jane Robins and Elsa Johnson. Jackson, perhaps motivated by a friendship with Robins, or animosity towards Johnson, or because she believed Johnson posed a genuine threat to maintaining a peaceful neighborhood, or all three motives, informs Robins that Johnson's

words constitute a prosecutable offense, and that it is a fairly simple process to bring Johnson to justice. Some time after finding that she can indeed charge and prosecute Johnson with speed and ease, Robins hears about her neighbor, John Francis, being attacked and instructs him accordingly: where the justice of the peace court is, how the process works, and how to best make his case. Though Francis was not ultimately successful, this type of pattern appears repeatedly, and often with positive results for black litigants. These litigants' legal genealogy also demonstrates how networks of communication spread throughout Boston's black community and the interconnectedness of the black community: Robins and Francis, residing on Charter St., lived in the northeast end of Boston in Ward 1, while Nancy Jackson lived a mile away on the west side, near Belknap St. in Ward 6.[159]

Rebecca Freeman, whose court exploits outdid most of her contemporaries, can be tied to multiple networks of litigious women. Charged as a minor in 1813, she managed to defeat an assault charge; in 1815, George Reed brought her to court for profane swearing, a charge that Freeman would eventually use herself in July of 1819 against another woman of color, Lucy DeCosta, who was found guilty and paid the standard fine plus costs.[160] Assisting Freeman's prosecution were three black women, Amy Jackson, Harriet Hubbard, and Delia Jordan. These three black women, in addition to

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[159] W. Jackson v. Thomas Bush, January 19 1816 and Robins v. Johnson, January 29 1816 in Gorham, *Criminal Actions from June 28 1815 to September 2 1816* ; Robins v. Coatman and Robins v. George, December 12 1818 in Gorham, *Criminal Actions from Feburary 2 1818 to June 2 1819;* Robins v. Freeman, October 23 1819 in Gorham, *Criminal Actions from June 3 1819 to November 6 1820;* Francis v. Grice, September 18, 1818 in Gorham, *Criminal Actions from Feburary 2 1818 to June 2 1819* and Francis v. Potter, September 28, 1819 in Gorham, *Criminal Actions from June 3 1819 to November 6 1820;* Robins and Francis in the same cluster of homes on Charter St. in the *The Fourth Census of the United States,* 1820; location and distances determined from John G. Hales' 1814 map of Boston.

[160] Gorham, *Criminal Actions from June 3 1819 to November 6 1820;* July 3, 1819.

Freeman and one other who was similarly associated, would appear before Gorham a total of eighteen times in fourteen cases over a two year span as plaintiffs, defendants, and witnesses. Their success rate was remarkable; only two of the women experienced defeat, and one of those women won on an appeal to the Municipal Court.

Jackson came before Gorham in three cases as a defendant, twice charged with theft and once with assault; each time her antagonist was white. The decision in each case was "not proven." Two months prior to first being charged with theft in October of 1819, she appeared as a plaintiff and managed to have a white woman jailed for one day on a 'profane swearing' charge. One of the witnesses for Jackson was Harriet Hubbard, who, after assisting Freeman and Jackson in successful prosecutions, would appear in again as a witness in June of 1820, helping a black woman named Mary Williams successfully prosecute another black woman on the familiar charge of profane swearing.[161]

Amy Jackson's other witness in her complaint against the white woman was Sally Garry. Garry was accused of the same theft as Jackson in October of 1819, and likewise received a decision of "not proven." One year later Garry again escaped punishment when accused of assault by a black man who could not prove his case. Her only defeat in court came in July of 1819 when charged with assaulting a woman; instead of paying the fine, however, Garry appealed the decision to the Municipal Court, who declared her not guilty. The Municipal Court records reveal that Garry's accuser, Hepzibah Easte, was found guilty of assault by another justice of the peace the day before

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[161] Ibid. Jackson appeared as a defendant twice on October 19, 1819 and once on November 11, 1819; as a plaintiff on August 5, 1819, with Hubbard as a witness. Hubbard appeared as witness for Williams on July 29, 1820.

Garry was brought before Gorham. It is possible that Garry or an associate had successfully charged Easte before this other justice. Delia Jordan, the third of Rebecca Freeman's witnesses, was brought to court twice later that summer by other black Bostonians for threatening and assault. Both times Gorham rendered a decision of not proven.[162]

The consistent success of these five women of color suggests an "intricate network of exchange" of information and savvy regarding how the justice of the peace could be used as a weapon against neighborhood antagonists, and how to best defend oneself when charged. Since this knowledge was used most frequently against other people of color, the sphere of learning expanded. This sharing of experience and knowledge forged relationships both amicable and hostile and were part of bedrock of 'community', where the seeds for both solidarity and dissension lay. Christine Stansell notes that within female relationships there were "structured expectations of reciprocal help" but that this "cooperation did not automatically engender harmony" as quarrels were common, resulting at times in fighting, cursing, or other manifestations of dissatisfaction.[163] The justice of the peace court provided a stage upon which the conflicts of the neighborhood were acted out, but also displayed the interconnectedness of the black community, particularly for black women.

Many of the black female plaintiffs charged black defendants with the verbal crimes of threatening and profane swearing. From 1818 to 1820, of the

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[162] Ibid. Garry appeared with Jackson on October 19, 1819, and was charged with assault onJuly 15, 1819 and October 2, 1820. Jordan appeared on July 20, 1819 and August 24, 1819. Accounts of the trials on Garry's and Easte's appeals are in *Boston Municipal Court Record Books*, August 1819, pp. 112 & 117.

[163] Christine Stansell, *City of Women: Sex and Class in New York 1789-1860* (Alfred A. Knopf: New York, 1986), 41, 57-58. 'Community', as I use it here, is clearly not synonmous with harmony, but connotes multiple and continuing layers of relationships.

11 profane swearing charges, all were pressed by black women against other women, and all but one were made against other African Americans. Of the 78 threatening charges brought by black plaintiffs, 60 were brought by women, and 56 of those were issued against other African Americans. Assault charges were evenly split, with 66 female plaintiffs and 65 male plaintiffs. But again, gendered differences arise: black women only charged 11 whites with assault, whereas black men did so 38 times. Clearly, black women stood at the forefront of transmitting legal experience to other African Americans. Like Rebecca Freeman, by bringing others to court as defendants and witnesses, they broadened the scope of interactions with the legal system.

The procedures of the court itself, intentionally or not, encouraged the evolution of networks of African Americans familiar with the workings of the legal system. When proved, certain types of charges, such as threatening--which black plaintiffs used more than any other charge except assault--did not generate fines for defendants. Instead, the court required a surety "to keep the peace" for a specified period. The defendant had to then either demonstrate that she or he could pay the amount levied by the court if the peace was not kept, or muster enough friends who were willing to permit a fine "to be levied on their goods or chattels, lands or tenements, and in want thereof, upon their bodies" if the defendant broke the peace and was unable to pay.[164] Between 1806 and 1820, 251 black defendants were judged guilty in cases that required a surety instead of a fine or jail time. Ninety-three of those defendants (37%) were able to comply. It is doubtful that more than a handful, if any, of those 93 had the personal wherewithal to convince the justice that a surety--which ranged from a low of fifty dollars up to several

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[164] Freeman, *The Massachusetts Justice*, 178.

hundred dollars--would be paid. It is probable, then, that most or all of the 93 defendants who complied with the order to come up with a surety enrolled the help of friends, perhaps several friends, some of whom were likely black. Thus, the court's enforcement process acted as a kind of 'radiating effect' to introduce still more black Bostonians to the legal system.[165]

This again places black women in the center of the expansion of the black legal experience. Of the 93 black defendants who complied with a surety order, 55 had been charged by a black woman, and 48 of those were charges of threatening. Whenever a black Bostonian, who may have had no previous contact with the court, was approached by a penitent friend seeking financial support in order to stay out of jail, he or she could likely thank a black woman for connecting them to Boston's legal system.

Black women found that accusing someone of threatening gave them a good chance of succeeding in court. Only four black female plaintiffs failed to obtain some sort of verdict against white or black defendants when they applied this charge. That type of success likely spurred black women to use this charge more frequently; the incidence of threatening cases accelerated over the course of the decade.

Overall, both women and men experienced significant success--two out of every three black plaintiffs succeeded in getting the justice of the peace to make some sort of judgment against their antagonist. The chance for success no doubt encouraged their willingness to use the court. In 1810, black litigants appeared in an average of 6.4 cases a month, and defendants outnumbered plaintiffs 2 to 1. By the end of the decade, black litigants averaged about 15 appearances a month, with a nearly 1:1 ratio of plaintiffs to

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[165] Marc Galanter, "The Radiating Effects of the Courts" in *Empirical Theories about Courts*, 117-142.

defendants. Succeeding entailed required recasting their complaints in a language designed to elicit a response from the court.[166]

African Americans learned to rephrase disputes through the justice of the peace's instructions, through informal discussion, and by being brought to court. It was probably not unusual for someone to come to the justice or the constable, telling a story about an antagonist doing or saying certain things, behavior labeled by the constable or justice as a criminal charge. Others learned by being charged themselves, by coming as witnesses, or by having others with previous court experience helping them define a particular experience in legal terms. Being able to name an adverse experience in prosecutable legal terms was a subtle form of power. Naming an offense, and claiming redress in court, publicly defined the plaintiff as attempting to operate, at least for the moment, within the norms established and reinforced by the courts. Conversely, naming and claiming threatened to place the defendant outside those norms.[167]

When African Americans rephrased their personal disputes in terms that spoke to larger concerns of social order, they were, consciously or not, publicly declaring their civic worth. The Municipal court reinforced this more explicitly when Venus Synix, a black widow, charged a black man, John Bowers, with keeping a "bad noisy house." Synix was not just complaining about late-night parties. This court found that Bowers "with force and

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[166] I deemed a prosecution successful if the plaintiff achieved one of six possible decisions rendered by Gorham: 1) defendant paid a fine; 2) defendant fined but jailed for nonpayment; 3) defendant sentenced to a jail term; 4) defendant pledged a surety; 5) defendant ordered to pledge a surety but "refused" and subsequently jailed; 6) defendant ordered to pay a fine or pledge a surety but appealed. Conversely, I deemed a defendant successful if he or she managed to avoid all of these and achieved a verdict of "charge not proven."

[167] See William L. F. Felstiner., Richard L. Abel, and Austin Sarat, "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming..." *Law and Society Review* 15 (1980-1981), 631- 654.

arms...did keep and maintain...a certain common ill governed and disorderly house...for his own wicked gain, [permitting] diverse people of evil name and fame and dishonest conversation, both black and white, to frequent and come together... there Whoring and otherwise misbehaving themselves... to the common nuisance of all the good citizens." The court found Bowers guilty, fined him $100 and ordered him to post another hundred dollars to ensure good behavior for six months. While the several references to the "good citizens of the commonwealth" were standard language for the court records, it nonetheless carried some meaning by casting behavior like Bowers' as antithetical to good citizenship. Furthermore, cases of this sort were of particular importance to the courts and to the town government, who sharpened the focus on organized vice in the first decades of the new century.[168] Synix's use of the justice of the peace court affirmed her status as a "good citizen" and her success in punishing a neighborhood nuisance no doubt increased her status in the black community. Furthermore, it was an expression of her attempt--backed by the power of the legal system--to maintain some amount of control over her daily life.[169]

African American litigants also learned to exploit the power of the legal system and the moral codes it attempted to reinforce for their own ends. On a summer Sunday in 1820, while many of their fellow citizens of color were attending the African Baptist Church, two black men came across Nelson Mason, an African American bootblack, busily running a cockfight. The two men, Henry Steward and James Hanson, probably had little trouble

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[168] Ferdinand, *Boston's Lower Criminal Courts, 1814-1850* , 23.

[169] Gorham, *Criminal Actions from June 3 1819 to November 6 1820,* Synix v. Bowers, August 31, 1819; *Boston Municipal Court Record Books,* September 9, 1819, p. 129. Located at the Massachusetts State Archives.

finding Mason since the cockfighting likely took place in one of the public markets that evolved out of west African and slave culture and had a long history in New England. Steward and Hanson knew that many whites frowned on these Sabbath-day markets and took advantage of that to have Mason charged with "using sport on the Lord's Day." The justice found Mason guilty and fined him four dollars plus costs. But it is doubtful that the motives of Steward and Hanson were very-high minded; Thomas Hanson, probably related to James, had unsuccessfully prosecuted Mason for beating him up in December of 1819. Steward had also assisted Thomas Hanson in prosecuting another black man in November of 1819. In the cockfighting case, James Hanson served as a witness for Steward, who, with several previous appearances before the justice as plaintiff, defendant, and witness, prosecuted the case. Using Mason's violation of a moral standard as a springboard, Steward and Hanson jumped at the opportunity to gain revenge through the legal system.[170]

Similarly, Rebecca Freeman found herself at the receiving end of a prosecution aimed at revenge when Mary M. Williams, a black woman, charged her with profane swearing in November of 1819. Freeman, unable or unwilling to pay the $1 fine that was assessed when found guilty, spent the next three days in jail. Mary Williams' education in using the court came from none other than Freeman herself, who had charged Williams with threatening and profane swearing a month earlier. Williams, no doubt chagrined at being forced to shell out the fines, turned the neighborhood conflict into a legal dispute.[171]

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[170] Pierson, *Black Yankees*, 102-103; Gorham, *Criminal Actions from June 3 1819 to November 6 1820*, Steward v. Mason, July 20, 1820.

[171] Gorham, *Criminal Actions from June 3 1819 to November 6 1820*, Steward v. Mason, July 20, 1820; Williams v. Freeman, November 2, 1819; Freeman v. Williams, October 5, 1819.

Whether borne out of tensions emanating from racial or class stratification, or personal animosities, using the court to repay antagonists was a deliberate choice. Vengeance, after all, can be carried out in a number of ways, some more acceptable to notions of social order than others. Pursuing vengeance may have often been an attempt "to restore symmetry to imbalanced social exchange" by preventing relationships from getting too unequal and potentially exploding into more serious acts. Steward and Hanson channeled their conflict with Mason through the court instead of seeking private retribution that could have escalated violently. Freeman and Williams moderated whatever tensions existed in their relationship through the court, which offered a controlled environment that produced outcomes-- fines, removal to jail, or declarations of innocence-- sanctioned by the law. For these litigants, the law became "an instrument for private [and] public vengeance." It was private in that the conflict was not confined to the incident rephrased for the court into a specific charge, but involved personal histories of tangled relationships. By taking their private disputes to the court, black litigants transformed their conflicts into a public matter before a judge and spectators. In doing so they learned to rephrase and narrow disputes into recognizable legal claims that could be dealt with quickly in a venue that offered a decent chance of success.[172]

When Mary Jane Boylston charged John Williams with bastardy in June of 1812, she 'narrowed' a conflict that probably sprang out of a complicated relationship. In contrast to the pre-Revolutionary concern with

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[172] On revenge and the law, see Jonathan Rieder, "The Social Organization of Vengeance" in *Toward a General Theory of Social Control*, ed. Donald Black (Orlando: Academic Press, 1984), vol. 1, 132-133. On transformation of disputes and rephrasing, see Yngvesson and Mather, "Language, Audience, and the Transformation of Disputes." On court spectators, see Steinberg, *The Transformation of Criminal Justice*.

immorality, courts in the early republic era were not interested in mediating personal sexual relationships or in punishing potentially illicit women. The focus had shifted to fixing paternity in order to ensure that unwed mothers did not become a burden on communal resources. Here the interests of one member of a group that stood at the bottom of the social, economic, and political structures of power-- black women-- merged with the interests of those who possessed power. Williams was ordered to come up with $300 in surety to ensure that he would abide by the order of the Municipal Court. The records do not reveal what that court's order was, but it probably compelled Williams to shoulder some responsibility for the care of Boylston's child. Boylston worked within the 'normative framework' to achieve a desired end.[173]

Interpreting the meaning of black litigants' experiences has it dangers. Court records, as Shane White has noted, are often characterized by "spare details and dry language [that] tend to flatten out black behavior, making it appear little different from that of whites who broke the same laws."[174] That description fits the records used here. Without knowing what these black women and men said in court as they made their case, or what they said out of court when they complained about adverse decisions or reveled in legal victories, reading the growth of a legal consciousness from these records may seem a bit tenuous.

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[173] Gorham, *Criminal Actions from November 24 1813 to June 28 1815,* Boylston v. Williams, June 20, 1815; on the shift in attitude towards unwed mothers, see Nelson, *Americanization of the Common Law,* 111. Nelson notes that in the post-Revolutionary era, "in paternity cases... the courts not only overlooked the plaintiff's sinner status, but also rendered the sinner affirmative help in obtaining relief from the consequences of sin."

[174] White, *Somewhat More Independent,* 183.

But that very lack of detail and the tight descriptions are in themselves revealing, however. Courts have methods and procedures to keep a case 'cool'-- to make a potentially explosive or emotional dispute that might be accompanied by an entire range of emotive display, a rational and orderly presentation of the litigants' interpretations of the conflict. The rather dry and flat language Gorham employed to record disputes suggests an attempt through the official record to keep these disputes 'cool.' Whether or not this was indicative of the court's atmosphere is hard to know, although it seems likely that if Gorham attempted to do this in the official record, then he may have also done so in his demeanor and through the procedures of the court.[175]

And legal procedure held the potential to affect the identity of the litigants. Sally Engle Merry notes that "conflicts are rarely matters of simple interest and rational argument but instead tend to be passionate encounters in which the whole person is on the line. Some conflicts have meaning for how the person thinks about himself or herself and his or her social world, her ability to cope and to defend herself, and her ability to create an acceptable image of herself and her life." Every time a black woman or man stepped into Gorham's court, there was essentially a meeting of cultures-- the public street culture of the neighborhood, with all its irritants, rage, frustrations, poverty, hardships, and racism confronted the rationality and control that legal culture attempted to impose on conflicts. Even though interaction between African American culture and the dominant culture happened on a daily basis, and was therefore less remarkable from Black Bostonians' standpoint, black litigants nevertheless walked into the courtroom faced with

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[175] Merry, *Getting Justice and Getting Even*, 98.

the challenge of presenting a version of self that fit into the courtroom environment--a version of self that would merge with how the court defined a rational, self-cotrolled being. Patricia Ewick and Susan Silbey have described how the law recreates "social relations in a narrower, relatively discrete, and professionally managed context."[176] Though Ewick and Silbey may not have intended the term 'social relations' to be defined as narrowly as literal relationships and interactions between individuals, the concept applies: the relationship of the litigants to one another, and of each litigant to civil society, was played out in the more managed environment of the court. In order to succeed in court, black plaintiffs and defendants learned to fit themselves, to some extent, into this recreation. They strove to present themselves as responsible citizens exercising their right to use the court.

As a part of that process, black litigants learned to manage conflict by rephrasing both the dispute and themselves for the court. More than simply learning to apply the correct legal categories to a dispute, rephrasing involved "a particular construction of a dispute, a construction which orders facts according to normative claims which are seen as persuasive." Black litigants learned that "veracity consists of the extent to which situations can be persuasively interpreted and presented." And perhaps most importantly, black litigants learned that arguing their cases in court was actually "competing ways of construing events and selves within particular normative frameworks." They presented not just competing versions of events, but also competing versions of selves against white and black antagonists. Doing so must have transformed, to some degree, self-conception--it is unlikely that most black litigants neatly and completely

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[176] Ibid.; Patricia Ewick and Susan S. Silbey, "Conformity, Contestation, and Resistance: An Account of Legal Consciousness," *New England Law Review* 26 (Spring 1992), 731-749.

separated the self they presented to the court from their total identity. For women and men losing power in many other arenas, discovering one in which they had a real chance to exercise some form of power through presenting a version of events and self must have fostered a sense of the self defined in part by the law.[177]

This is not to say that legal actions, whether litigation or signing deeds, destroyed or overwhelmed African American identity. Legal actions did not make black Bostonians 'American.' One legal historian points out that while law does not destroy culture, "law and legal consciousness can, however, work in concert with other forces to alter culture." In early nineteenth century Boston, because the law was accessible and did deliver justice where it mattered--in personal relationships and circumstances--it worked in concert with African Americans' diminishing opportunities to shape black identity.[178]

African Americans in Boston used the court with increased frequency through the first two decades of the nineteenth century. They took advantage of an accessible forum to manage conflict to punish neighborhood antagonists by fine or by removal to jail. They did so to such an extent that in less than three years over one-fourth of Boston's black citizens appeared before one justice of the peace. Their involvement in the lower court--and their frequent success -- likely developed a "conscious sense of legal entitlement that encourages individuals and groups to use legal beliefs in disputes about their status, rights, duties, and problems." Some of those beliefs certainly would have included a self-conception as legal beings with the right to protection, the right to prosecute, and the sense that the law was to somehow

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[177] Merry, *Getting Justice and Getting Even*, 92.

[178] Mari J. Matsuda, "Law and Culture in the District Court of Honolulu, 1844-45: A Case Study of the Rise of Legal Consciousness," *American Journal of Legal History* 32 (January, 1988), 40.

be responsive to their needs. This encouraged them to use the law to get justice and to manage conflict with neighbors, reinforcing a sense of self as a legal being who could lay claim to a group of rights, and employ those rights in ways that had immediate effects.[179]

Ideally, this argument would end by revealing that many of the African Americans, or at least their sons or daughters, who participated in various forms of legal activity eventually employed legal beliefs in efforts to protect and expand rights and opportunity for African Americans. There are some connections. Scipio Dalton, who bought land in Boston in 1799 and became vice-president of Boston's African Humane Society, probably had a hand in writing or approving the Society's charter and by-laws. Dudley Tidd, a member of the Board of Directors, was likely related to the Tidds who appeared twice before Gorham in 1812 and once in 1816. Thomas Paul, the pastor of Boston's first black church, was President of the Society and also appeared as witness in Gorham's court in 1808.

The Society, founded in 1818, prefaced its by-laws with a preamble refering to the Constitution, stating that "our laws protect all classes of men in all their rights." The Secretary and Treasurer had to be sworn in as officers in front of a justice of the peace, and the Board of Directors had the responsibility of acting as a court to determine the veracity of any charge against a member of the society for misconduct. The by-laws charged the Directors to "impartially try the charge in question according to the evidence, with due consideration." The leaders of this society chose to identify themselves as African in naming the organization, as many churches and benevolent societies did in the late eighteenth and early nineteenth century,

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[179] Michael Grossberg, *A Judgment for Solomon: The D'Hauteville Case and Legal Experience in Antebellum America* (Cambridge University Press, 1996), 2.

but turned to the legislature and the courts for guidelines on how the organization actually went about its business. They chose a public identification of 'African,' while building the structure of the Society and outlining its function with specific legal procedures. As James Oliver Horton and Lois E. Horton have pointed out regarding the generational change from African-born to American-born, for African Americans in the nineteenth century, "Africa was more their heritage than their home." For the members of the African Humane Society, heritage compelled them in naming the organization, but their home dictated its form, function, and governance.[180]

Scipio Dalton emerged as one the leaders in Boston's black community, helping to organize the first black church in the city. His son Thomas became the first president of the Massachusetts General Colored Association and remained a prominent figure in black activism for fifty years. Dalton also worked closely with David Walker. Another likely associate of Walker was James Gould, a plaintiff before Gorham in 1818 and again in 1819. Gould was one of the Boston distributors of Freedom's Journal, the nation's first black newspaper, and a toaster at a Boston antislavery banquet. Henry Tyler, charged and jailed for bastardy in July of 1820 by a black woman, was also listed as toaster at the same banquet and likely an associate of David Walker in the late 1820s. Thomas Brown, another associate of David Walker and a member of the African Lodge in 1828, appeared before Gorham as a boy in 1818, charged with assault by a white victualer. Robert Roberts, who successfully prosecuted a white woman for assault in 1819, eventually became a member of the state's Negro Convention and was a central figure in pushing for the fulfillment of promised civil rights. Finally, William

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[180] Horton and Horton, *In Hope of Liberty*, 191; *The By-Laws, rules and regulations, of the African Humane Society*.

Brown, another leader within Boston's black community in the 1820s and later, appeared numerous times before Gorham, three times as a plaintiff between 1816 and 1818. And there are other more indirect connections.[181]

These are, admittedly, loose connections. Men like Dalton and Tidd and the other founders of the Society could have been influenced by multiple sources in addition to appearing in court or signing a property deed. But that is in some respects the point: the law shaped African Americans identity through a variety of means. The African Humane Society's charter was a product of that identity. Even if the founding members had someone else draft the by-laws, they adopted the charter and carried out the activities of the Society under the charter's strictures and guidelines.

But most of the men and women who engaged in legal activity, particularly in the justice of the peace court, were not leaders in the traditional sense. Most were not even heads of households in the 1810 and 1820 censuses. It is not surprising, then, that they do not emerge later as political leaders in the black community. But this did not minimize their influence on the formation of individual and corporate identity formation as they shared knowledge of how to negotiate legal transactions or stories of courtroom triumphs and defeats. In fact, the apparent sparsity of 'leaders' in

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[181] Some of the other possible indirect connections: other officers of the Society may have had relatives who appeared before Gorham--Dudley Tidd, for instance, was likely related to the Tidds who appeared before Gorham in 1812 and 1816. John Pero, also an associate of Walker and a member of the African Lodge, was probably related to Henry Pero, who as a boy escaped conviction when charged with assault in 1820. Many other members of the African Lodge were hairdressers, and may have known Samuel Francis, a black hairdresser who appeared before Gorham several times as a plaintiff over several years. Material on the African Lodge in Peter P. Hinks, *To Awaken My Afflicted Brethren: David Walker and the Problem of Antebellum Slave Resistance* (University Park: The Pennsylvannia State University Press, 1997), 265-266. On Thomas Dalton, see James Oliver Horton, *Free People of Color: Inside the African American Community* (Washington: Smithsonian Institution Press, 1993), 43-44.

their ranks may have been a strength as common black folk communicated a legal sense of self to one another in straightforward and effective ways.

On some level, black litigants accepted the authority of the legal system and invested it with a legitimacy that meant something in the black community. Even those who did not directly participate in the legal system were likely affected. Through their experience, litigants gained leverage based on knowledge of what a court might do. By going to the justice of the peace, black Bostonians gained knowledge of what norms were affirmed and enforced by the courts. Even losing defendants, forced to experience first-hand the power and procedure of the court, could have used this knowledge. It is not difficult to picture a formerly punished offender, nursing a grievance against a neighbor, threatening court action, and employing a type of 'bargaining endowment'--by giving weight to her threat by communicating what happened to her when she committed a similar offense.[182]

In the late eighteenth century, holding power over a piece of property, protecting one's vocation, or controlling an inheritance helped establish certain boundaries for free black men and women who had directly or indirectly experienced bondage. In the early nineteenth century, those born before emancipation and the first generations of African Americans to be raised in a free community, while still no doubt aware of the law's power to be oppressive, learned to "harness the power of the law" in their attempt to maintain some boundaries over their daily lives.[183] Many of Boston's black citizens either reinforced or constructed concepts of personal rights and a sense of self being expressed, protected, and perhaps even expanded, through

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[182] Marc Glanater, "The Radiating Effects of the Courts," in *Empirical Theories about Courts*, ed. Keith O. Boyum and Lynn Mather, (New York: Longman, 1983), 117-142.

[183] Phrase borrowed from Merry, *Getting Justice and Getting Even*, 180.

their legal activity, whether in signing deeds or through courtroom litigation. Legal actions began to structure the way black folks perceived themselves. Legal actions helped construct notions of self as a legally defined individual with certain rights. For African Americans, though, it may have also meant corporate conceptions, as they cemented communal connections through formal legal mechanisms like deeds and wills, and by building alliances through enlisting witnesses against neighborhood antagonists. This may not have been their intent, and it may have been a natural thing to do--it was what whites did--but it did not necessarily mean the same thing for black people as it did for white people. For black Bostonians, a sense of the legal self would play an important role in their struggle for full citizenship. It may have even been a necessary precursor to their corporate attacks in the mid-nineteenth century on segregationist laws and practices in the North.

Chapter Three

Limits and Possibilities of Legal Consciousness, 1822-1855

John Robinson was a man with a problem. It was, by most measures, not a serious problem; definitely not as serious as the difficulties that many of his fellow free people of color faced from time to time in a racially oppressive society. As an occasional figure among black Boston's cadre of leaders during antebellum era activism, Robinson was well aware of those obstacles, minor or major. This particular problem, though, was an obstacle of the literal sort. Robinson dealt with it by drafting a letter in the late summer of 1842, signed by several other residents of Bridge Court. His letter may have been aimed at the city selectmen, or it may have been intended for circulation in the immediate neighborhood. Robinson stated that the he and the other residents of Bridge Court had been "and are still annoyed by certain obstructions being placed in the passage-way of said Court, much to our inconvenience." Robinson took the lead in rectifying this nuisance -- the letter begins "This is to Certify that I, John Robinson, with others." The annoyed residents of Bridge Court stipulated "that such obstructions be forthwith removed and said Court in future be kept clear" and directed that "there shall not be any thing placed in the said passage-way of said Court, and will also discountenance the same in others."[184]

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[184] Letter of John Robinson in the Robert Morris box, located at the Boston Athenæum. Signed by six other residents.

The Bridge Court petition never mentioned exactly what type of obstructions plagued the residents. Boston had been steadily growing in population, and as a regional economic center. A large portion of the region's exports and imports flowed through the city, causing increased problems with traffic in the narrow streets of the city and with construction materials being left in the streets. Boston's truckmen, carting heavy loads of these goods about town manually, or carpenters leaving planks or rubbish, may have been the perpetrators of the inconvenience irking John Robinson and his neighbors. Ordinances had been passed long before to deal with these problems; the obstruction of streets meant the obstruction of commerce, an intolerable circumstance in an expanding economy.[185]

Robinson's petition demonstrates a certain sensibility and expectation that control and use of this public street belonged primarily to the residents, and not to the truckmen or whoever was placing the obstructions in the court. Streets labeled as courts in Boston typically denoted either a dead end street or a narrow street that connected two major streets, so the passage-way Robinson referred to was probably the entrance into the court from the main street. Blocking the passage-way effectively made the court inaccessible. Though there had been attempts to regulate traffic and obstructions to traffic, it would not be until 1846, four years after Robinson's letter, that the city's police force actually put any significant effort into enforcing those ordinances.[186] Robinson knew that any improvement in the situation would have to come at the initiative of the Bridge Court residents.

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[185] Francis X. Blouin, Jr., *The Boston Region 1810-1850: A Study of Urbanization* (Ann Arbor, Michigan: UMI Research Press, 1980); Roger Lane, *Policing the City: Boston 1822-1885* (Cambridge: Harvard University Press, 1967), 68, 109-110.

[186] Lane, *Policing the City*, 62.

Robinson clearly manifested a legal consciousness. Legal scholars Patricia Ewick and Susan Silbey define legal consciousness as "the ways in which people make sense of the law and legal institutions" and how those understandings "give meaning to people's experiences and actions." Legal consciousness is that and more: it is, as the previous chapter suggested, not only how people perceive the law, but a "conscious sense of legal entitlement that encourages individuals and groups to use legal beliefs in disputes about their status, rights, duties, and problems." Legal consciousness is revealed in how individuals choose to put those perceptions -- those 'legal beliefs' -- into action.[187]

One of the signifiers of John Robinson's legal consciousness was his choice of words in his brief letter: in a manner mirroring the language of formal legal documents, he referred back to Bridge Court three times as "*said* Court," and after specifying that the obstructions were being placed in the passage-way of Bridge Court, he referred once again to the "*said* passage-way of *said* Court." Though typical of official legal documents, this letter was not a product of a formal court proceeding; it was handwritten and probably directed to the selectmen, the police department, or simply a draft of a notice to be posted. Robinson obviously thought this kind of legalistic wording carried weight. By appropriating the authority that legal language carried, he attempted to inscribe legality on the mundane. Whether Robinson's letter had the desired effect is uncertain, although the lack of further complaints may be an indication that the obstructions ceased to impede the comings and goings of the Bridge Court residents.

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[187] Patricia Ewick and Susan S. Silbey, "Conformity, Contestation, and Resistance: An Account of Legal Consciousness," *New England Law Review* 26 (Spring 1992), 734; Michael Grossberg, *A Judgment for Solomon: The D'Hauteville Case and Legal Experience in Antebellum America* (Cambridge University Press, 1996), 2.

African Americans in antebellum Boston, like the members of the African Humane Society and the litigants in the justice of the peace court, were comfortable using beliefs about the how law worked to exert some kind of control over their daily lives. In many respects, the manner in which they did so likely did not differ substantially from that of their white neighbors, particularly when it came to using the courts to manage conflicts. Black urbanites in Boston and other northern cities found, however, that using the courts provided fodder for the perpetuation of racist ideologies, as newspapers began to regularly lampoon black litigants. Court reporters' published accounts of the legal travails of black litigants fit within a larger context of increased public derision of northern African Americans in broadsides, newspapers, and minstrel shows.[188] Employing legal consciousness by using the courts became something of a double-edged sword: as African Americans exercised their right to use the law, white observers used their efforts to help fashion a racist caricature, making that public space more perilous.

Nevertheless, black Bostonians like John Robinson developed and wielded a legal consciousness that outlined ways in which they believed the law should and could work. Frequently these beliefs were made manifest through formal legal interactions, such as in the courts. On other occasions, these beliefs were put into action in informal ways invested with the

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[188] On the deteriorating atmosphere of race relations and increased public denigration of northern African Americans, see Gary Nash, *Forging Freedom: The Formation of Philadelphia's Black Community, 1720-1840* (Cambridge: Harvard University Press, 1988); Lamont D. Thomas, *Rise to be a People: A Biography of Paul Cuffe* (Chicago: University of Illinois Press, 1986); Leonard P. Curry, *Free Blacks in Urban America* (Chicago: University of Chicago Press, 1981); David Roediger, *The Wages of Whiteness: Race and the Making of the American Working Class* (New York: Verso, 1991); Eric Lott, *Love and Theft: Blackface Minstrelsy and the American Working Class* (New York: Oxford University Press, 1993); Shane White, " 'It Was a Proud Day': African Americans, Festivals, and Parades in the North, 1741-1834," *Journal of American History* 81 (June 1994), 13-50.

authority of the law, which could work in the interest of both African Americans and legal authorities.

Richard Crafus, a legendary figure in Boston, epitomized the manner in which the law could work for both groups by occupying a position between the white legal system's formal mechanisms for maintaining social order and the black community's informal means of managing conflict. Crafus, one of many African Americans who had served in the United States Navy in the War of 1812, was captured and sent to Dartmoor prison in England, where he soon became the leader of nearly one thousand imprisoned black mariners. Popularly called King Dick, Crafus was a man of such size and strength that he reportedly fought off an attempted coup by some other black prisoners who sprung an ambush while he was sleeping by seizing "the smallest of them by his feet, and thumped another with him," successfully quashing the rebellion. The anecdote may have been more myth than fact -- though at well over six feet, perhaps weighing as much as three hundred pounds, and by all reports of great strength, he surely could have swung a small man around by his feet. As W. Jeffrey Bolster points out, though, Crafus' size and strength were not the only assets that propelled him to dominance among Dartmoor's black prisoners; along with physical ability, African custom required other character traits for leaders to attract and retain support. His 1831 obituary eulogized him as "this *king* Richard IV" who was "a man of good understanding, and he exercises it to a good purpose. If any one of his color cheats, defrauds, or steals from his comrades, he is sure to be punished for it." Another white Bostonian remembered him as a "generous, magnanimous man" who always advocated the "cause of right, preventing the strong from triumphing upon the weak." African Americans in Dartmoor and Boston

recognized Crafus' unique combination of personal and physical traits and bestowed upon him a position of high status.[189]

Sometime after being repatriated at war's end, Crafus moved into a similar position of leadership among the black community on what was then called 'Nigger Hill.' The Hill, straddling Wards Five and Six, and bounded on the south by the Commons, on the west by the Charles River, and on the east by court and government buildings, held the heaviest concentration of African Americans in Boston. Black Bostonians quickly became familiar with those traits that set him apart at Dartmoor. So, too, did many white Bostonians, and recognizing the respect he received from African Americans, Boston's law enforcement establishment approached Crafus and offered him "a special position," apparently as a sort of unofficial constable, which he accepted and "filled with distinction." Crafus reportedly kept his "muscles in full play... quelling riots and settling disputes. He did the work of ten men of the Constabulary force." Another chronicler of Boston described Crafus with a bit more complexity, calling him the "bully of the hill" but also "a peacemaker by practice." By reputation and action, King Dick was a potent force in helping to maintain some semblance of order on the Hill throughout the 1820s.[190]

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[189] For more on Crafus' experiences at Dartmoor Prison, see W. Jeffrey Bolster, *Black Jacks: African American Seamen in the Age of Sail* (Cambridge: Harvard University Press, 1997), 102-113; the story of the attempted coup is taken from Crafus' obituary, printed in *The Liberator*, February 26, 1831; George Hugh Crichton, *Old Boston and its once familiar faces: sketches of some odd characters who have flourished in Boston during the past fifty years*, 1881, an unpublished manuscript located at the Boston Athenæum. See chapter entitled "Big Dick." Crafus became a figure of such interest that, according to Crichton, he "sold his body to the Medical College, where his skeleton hangs to this day." Edward Savage's history of the Boston Watch also mentions that in 1865 Crafus' "stately figure may still be seen not a mile from his former residence."

[190] Crichton, *Old Boston*; Edward H. Savage, *A Chronological History of the Boston Watch and Police, from 1631 to 1865; Together with the Recollections of a Boston Police Officer, or Boston by Daylight and Gaslight* (Boston: 1865), 69.

Crafus acted as a de facto constable at a transitional time in northern urban policing. In Boston, city leaders like Josiah Quincy were bent on establishing a moral and social order in the midst of a growth in population and in economic potential. City officials focused in particular on using the courts and the police force to implement reform.[191] In his mediatory role, Crafus aided the police and city government in their efforts towards social reform, and so furthered the law's function of social control. But he also provided a buffer of sorts between black citizens and a white police force that often perceived African Americans as a threat to the goal of an orderly society. As a prisoner-of-war, Crafus gained valuable experience working as an intermediate between African Americans and white authorities. He did likewise in Boston.

To some extent, Crafus' ability to maintain the law's function of control and enforcement within the black community was no doubt strengthened by acting with the mandate of the 'special position' bequeathed upon him by the police. In fact, during a time when the black festivals were waning, and the traditional judicial function of black kings and their subordinates was undermined by competing alternatives such as the justice of the peace court, the backing of the police may have briefly reinvested this particular black king with a kind of paralegal authority within the black community. Black offenders knew the alternative to the justice of King Dick was the justice of

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[191] Ferdinand, *Boston's Lower Criminal Courts*; Lane, *Policing the City*; Paul Boyer, *Urban Masses and Moral Order in America, 1820-1920* (Cambridge: Harvard University Press, 1978); see also William J. Novak, *The People's Welfare: Law and Regulation in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 1996), particularly 149-190. Novak argues for greater continuity in the policing and governance of public morality from the colonial era through the early republic era instead of seeing the efforts of Quincy and others as an era of new reforms.

the white legal system, and many probably willingly abided by his rules and submitted to his penalties rather than risk other consequences.[192]

Black Bostonians had long recognized and acted within two overlapping legal systems: the formal white legal system and the system of enforcement and punishment that existed within the black community. Even the internal judicial systems of the black community, however, had been influenced by the white legal system; Joseph Reidy noted the white influence in the festivals' judicial functions. Any self-enforcement continuing within the nineteenth-century black community, particularly after the end of King Dick's reign, remains largely hidden. But in an era of increased regulation and reform, and with the strengthening of the police's purpose and function, it seems unlikely that African Americans enjoyed much of the occasional legal autonomy once provided by the festivals. And it is important to keep in mind that occasional nature; African Americans, including Crafus, interacted with the law and courts on nearly a daily basis, while the festivals were a once-a-year affair. The legal consciousness of Crafus and his subordinates, heavily informed by the white legal system, likely facilitated the acceptance of his role as a sort of ancillary constable.

As a black king in Boston, and as the leader of the black prisoners in Dartmoor, Crafus had operated within an African American tradition of the "quasi-legal system" of the eighteenth and early nineteenth century festivals. Whites had supported the festivals in part because of the self-policing that

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[192] See Shane White, "It Was a Proud Day,"; William D. Piersen,*Black Yankees: The Development of an Afro-American Subculture in Eighteenth-Century New England* (Amherst: University of Massachusetts Press, 1988); and Joseph P. Reidy, " 'Negro Election Day' and Black Community Life in New England, 1750-1860," *Marxist Perspectives* 1 (Fall 1978), 102-117. Black kings and governors continued to exist in New England into the 1850s, but the festivals became more sporadic and and some places, such as Massachusetts, stopped altogether by about 1830.

slaves and free blacks undertook during the festivals. For Crafus, operating in conjunction with the white legal system was a natural transition, as it apparently was for most black Bostonians who readily used the lower courts. But it was not a case of more of the same. White support of the festivals was more than permitting blacks to deal with lesser crimes internally; it was also manifested in providing food, drink, and clothes for black participants. For a few days of each year, African Americans expected and received largess from whites, a material manifestation of the role reversals performed during the festival. But in the nineteenth century, free black Bostonians received nothing of the sort -- in fact, even during Crafus' reign as king and his tenure as an unofficial constable, city officials bypassed Crafus at will by making forays into black neighborhoods to shut down brothels, unruly taverns, or other immoral activities, such as Mayor Quincy's 1823 crack down on girls "shaking down" on the Hill.[193] There were certain responsibilities that fell within Crafus' 'jurisdiction', but those responsibilities were defined by the white law enforcement officials and reform-minded politicians. Ultimately, his jurisdiction existed only so long as whites in positions of power deemed the arrangement advantageous. Furthermore, the 'jurisdiction' and mediating influence of Crafus and subsequent governors had boundaries: although the Hill supported the heaviest concentration of Boston's black population, anywhere from 45% to 70% of African Americans lived elsewhere in Boston.[194] African Americans' self-rule, though it persisted to

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[193] Savage, *A Chronological History of the Boston Watch and Police*, 63.

[194] George Levesque, *Black Boston: African American Life and Culture in Urban America, 1750-1860* (New York: Garland Publishing, 1994), Tables I-14 and I-15. The reason for the wide statistical spread (45%-70%) is because the 1820 census records about 55% of black Bostonians living on the Hill, or Ward 6, but only 32% in 1830. The city census of 1825 puts the figure at 27%. The decline between 1820 and 1825 may have been due to a significant relocation, of which there is presently no evidence; it is possible that the city census of 1825 undercounted the

some degree, became more circumscribed. Nonetheless, Crafus' role in acting on behalf of both the black community and the white legal system provided a transitional phase as black Bostonians' legal consciousness became less connected to the older traditions and more tied to the law that was growing in its reach into the daily lives of all Bostonians.

The growing encroachment of the law did not necessarily mean black Bostonians simply subjected themselves to it, however; like John Robinson's use of legal language, other blacks figured out how to sometimes bend even the reformist impulses of the legal establishment to their own devices. One of Crafus' successors, 'Governor' Riggins, demonstrated this when he turned one his subordinates, William Patterson, over to the court for violating a standing order. One of Patterson's responsibilities was procuring unlicensed liquor, but he made the mistake of doing this on a Sunday and supplying it to a party of fellow black Bostonians. Riggins admonished Patterson, reminding him that Patterson and his friends could "drink in my house, as comfortably as in the parlor of any gentleman of Boston" on a Saturday night. But doing this on a Sunday was just plain foolish. Riggin's chagrin may have been partly because he knew that during a time of heightened attention to temperance and morality, a party of drinking blacks would attract unwanted attention from city authorities. By leaving Patterson to the mercy of a white judge, Riggins used the law to remind Patterson of his proper place, and forestall a stronger response from legal authorities. Riggins, telling Patterson "I hope the law will make you smart," in effect used the law to reinforce his

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black population, but this seems unlikely since the total number of African Americans counted increased by 187. The most likely explanation is that the ward boundaries were either redrawn or the census takers , as the 1825 census records a substantial decrease inWard 6, while recording substantial increases for adjacent Wards 5 and 7.

own quasi-legal authority within the black community, and used the law to prevent law enforcement.[195]

Black Bostonians sometimes put legal consciousness to use in mediating relationships without ever going to court. The inadvertent remark of one white Bostonian revealed black Bostonians' ability to use their knowledge of how to use the threat of the law to gain retribution. This white man, brought to court for not shoveling the snow off his walkway, had attacked an elderly black man earlier in the week, and now assumed his victim had pressed an assault charge. Before discovering the actual charge, he blurted out that after the beating he "went and paid him seven and sixpence, and he acknowledged sastisfaction."[196] It is possible the white assailant merely felt guilty; it is more likely that his black victim put to use his 'legal beliefs' and threatened to take his attacker to court. By paying this elderly black man directly, the assailant avoided paying a fine and the possibility of spending time in jail.

African Americans also understood how to use more formal and direct methods to take advantage of the protection the law afforded for everyday life. Remember Ransom, an elderly black woman living in Salem, worked with her brother, Cato Freeman, to arrange for her care. They had a handwritten contract drawn up in 1838 directing Freeman to pay another black woman, Flora Brooks, fifty dollars after Ransom's death in return for Brook's caregiving. The contract also stipulated that Brooks could live with Ransom rent free, have use of the house for three months after her death, and make use of the produce from Ransom's garden. If Brooks left Ransom

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[195] *Selections from the Court Reports orginally published in the Boston Morning Post, from 1834 to 1837*, (Boston: Otis, Broaders, & Co. 1837), 173-174.

[196] Ball Fenner, *Raising the Veil; or Scenes in the Courts* (Boston:1856), 55.

at any time, the contract was null and void. Brooks put her mark to the contract, witnessed by two other men. Cato Freeman signed another brief handwritten note agreeing to pay Brooks so long as she met the terms of the contract.[197]

This relatively unremarkable agreement, articulating legal ties between its black participants, evinces a conscious choice by Ransom and Freeman to use a formal legal process to ensure that Ransom would receive aid in her later years. Ransom and Freeman could have maintained an informal verbal agreement with Brooks, or simply paid her on a regular basis. Instead, they put to use their understanding of the law to construct a legally defined relationship with Brooks. Brooks, too, experienced the benefits of the legal nature of the agreement, as it guaranteed housing for herself and her child, some food, and wages at the end of her service.

Ransom knew the ability of legal documents to safeguard one's property and well-being. Her husband, a laborer named Cato Ransom, and one of the property owners mentioned in the previous chapter, not only designated her as the heir of most of his personal and real estate, but he also appointed Remember as "the sole executrix of this my last will". The fees for inventorying an estate could add up to over fifty dollars; if a public official performed these duties, the fees could exceed one hundred dollars. When the Ransoms decided to have Remember operate in these capacities, they protected years of work and investment by keeping as much money as possible in the family. The judge of probate in Salem verified Remember Ransom as the executrix after Cato's death one year later in 1820.[198] As a

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[197] Contract with Flora Brooks is in the Robert Morris box, located at the Boston Athenæum.

[198] Carol Bulchalter Stapp, *Afro-Americans in Antebellum Boston: An Analysis of Probate Records* (New York: Garland Publishing, 1993), 4-5; Cato Ransom's will and the probate certificate is in the Robert Morris box, located at the Boston Athenæum.

property owner and executrix of her husband's estate, Remember Ransom had sufficient experience with the legal system to appreciate the importance and usefulness of using the law to secure an arrangement with Flora Brooks.

A variety of legal experiences schooled Africans Americans in making the best use of the law. In 1837 Amy Jackson had a will drawn up to dispose of her estate, which consisted of two small houses on a corner lot and another house and lot a block away on May Street. Three years later, her estate would be assessed at over $2600 when she died in 1840. Her 1837 will designated Mary Clark, the adopted daughter of her dead husband, as the sole heir. A year later, however, Jackson had a change of heart, and made out a new will naming Venus Senex, a nurse, as the only heir and the executrix. After Jackson's death, the will was contested first by Phineas Blair, Public Administrator, who argued that Jackson had left no heirs or kin within the Commonwealth of Massachusetts, since Clark lived with her husband in Portland, and therefore legally had died intestate. Mary Clark contested the will after notices had been published in newspapers. Finally, Senex contested Clark's claim, and the judge of probate ruled in her favor.[199]

Senex eventually asked the court to appoint one of the witnesses to the second will, Samuel E. Sewall, as the executor, for reasons unknown. Sewall, a prominent lawyer and one of the founders of the New England Anti-Slavery Society, must have put this low on his list of priorities, for a year went by with no progress on settling Jackson's estate. Senex did not sit idly by. Eventually she told the judge of probate, in a note apparently written in her own hand, that she wanted "the property of Amy Jackson sold by the SE Sewall by the sixteenth of March which will be a year and one day since her

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[199] Ibid., 122.

death." A year after her death, Jackson's debts had yet to be settled. Senex also informed the court that she had "another gentleman" ready to take over the process immediately if Sewall continued to be slow about settling the matter. She demonstrated her determination to get the entire affair behind her when she wrote the judge and asked him "please not to publish it in the Liberator for it is not so public a paper as some others this paper is very limited indeed" and requested that notices for the sale of Jackson's property be placed in the *Boston Morning Post* and the *Daily Advertiser*. Senex succeeded, and the estate was sold and the accounts settled within a few months. [200]

Jackson and Senex both had a history of taking initiative with the law in an effort to exert some control over their daily lives. Amy Jackson was one of the circle of black women who learned to effectively use the justice of the peace court. As a middle-aged woman, Jackson made eleven appearances in Stephen Gorham's court between 1812 and 1820; four as a witness, three as a plaintiff, and four as a defendant. Brought to court in 1819 twice on charges of theft and once on an assault charge, the justice of the peace exonerated her on each occasion. An assault charge in 1814 proved to be the only time Jackson suffered a defeat in court, for which she paid a small fine.[201]

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[200] Ibid. Sewall is described as a leader of the white abolition movement and co-founder of the NAAS in William M. Wiecek, *The Sources of Anti-Slavery Constitutionalism in America*, 1760-1848 (Ithaca: Cornell University Press, 1977), 160; and in Horton and Horton, *Black Bostonians*, 83.

[201] Amy Jackson appeared as a plaintiff in the record books of justice of the peace Stephen Gorham: Jackson v. Armstrong, June 27 1812, *Criminal Actions from August 11 1810 to July 18 1812;* Jackson v. Pricklow, June 7 1814, *Criminal Actions from November 24 1813 to June 28 1815;* and Jackson v. Francis, August 15 1819, *Criminal Actions from June 3 1819 to November 6 1820.* Jackson appeared as a defendant in Gould v. Jackson, December 12 1814, *Criminal Actions from November 24 1813 to June 28 1815;* Garry v. Jackson and Case v. Jackson, October 19 1819, and Gibbs v. Jackson, November 11, 1819, *Criminal Actions from June 3 1819 to November 6 1820.* Jackson appeared as a witness in Pernaby v. Olcott and Pernaby v. Hopkins, December 29 1812, *Criminal Actions from July 19 1812 to November 24 1813;* Renouf v. Cousins, November 26 1818, *Criminal Actions from February 2 1818 to June 2 1819;* and Freeman v. DeCosta, July 3 1819, *Criminal Actions from June 3 1819 to November 6 1820.*

Venus Senex was undoubtedly the same woman who appeared as the plaintiff Venus Synnex in Gorham's court in August of 1819 against John Bowers for operating a house of gambling and prostitution in her neighborhood. Synnex had the confidence to see the case through to the Municipal Court, resulting in a hefty fine for Bowers and the end of his business for the time being. Twenty years later, she apparently displayed little compunction in contesting the claims of the Public Administrator and Mary Clark; nor did she have any qualms in pushing Samuel E. Sewall by appealing to the judge of probate to move matters along when Sewall's timetable proved unsatisfactory. It is likely both of these women continued to appear in other courts whose records that have been lost or have yet to be uncovered.[202]

For African Americans, the ability to use the law and employ legal beliefs most likely held greater significance than it did for whites. When black men and women like John Robinson or Remember Ransom employed legal terminology and concepts, they used a form of power to maintain some measure of control amid life's vagaries. In those struggles African Americans frequently employed beliefs about how they thought the law should work, no doubt more often in ways left unrecorded, but at times that legal consciousness expressed itself in sources like John Robinson's letter. Black men and women had multiple sources for the evolution of a legal consciousness through regular involvement with the legal system. Robinson posted a surety in 1840 for the administration of William S. Jinnings' estate, a black trader who owned a business just a few doors down the street from

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[202] Gorham, Synnix v. Bowers, August 31 1819,*Criminal Actions from June 3 1819 to November 6 1820;* Commonwealth v. Bowers, September 9 1819, *Boston Municipal Court Record Books,* p. 129, located at the Massachusetts State Archives.

Robinson's clothing business.[203] As a business and home owner, Robinson would have dealt with various ordinances regulating life in a growing metropolis. He and his wife were probably aware of the arraignment of David Walker and two other black clothes dealers on theft and conspiracy charges in 1828, and the subsequent acquittal of all three due to Walker's heady defense.[204]

John Robinson's use of legal language in 1842 to clear his street fit within a pattern of bending the law to accomplish certain goals. The most dramatic manifestation of this pattern occurred in 1837, when Robinson and his wife, Sophia, were brought before the Municipal Court on charges of kidnapping Elizabeth, a five-year old African American, from her white guardians. During the course of this dispute, the legal consciousness of the Robinsons and other black Bostonians revealed itself as they attempted to apply their interpretation of how they believed the law should work.

The Robinsons suspected Henry Bright, Elizabeth's guardian, of being nothing more than a slaveowner masquerading as a benevolent caretaker who had brought his chattel north. Fueling their suspicion of the Brights may have been information imparted by Bright's former slave, Stephen Burt. When the case came to court, Burt testified that on the day of her mother's death, Elizabeth had been given to another slave named Eleanor. Other members of the African American community claimed Elizabeth bore suspicious bruises, and that her hair had not been combed for a long time.

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[203] Stapp, *Afro-Americans in Antebellum Boston*, 77-78.

[204] *Boston Municipal Court Record Books*, February 1828. The other two defendants were John Eli and John Scarlett; Peter Hinks notes that a Boston newspaper mentioned Walker's defense. Unfortunately, I have been unable to locate any written record of his defense; the file papers, which may or may not have contained such a document, for Municipal Court cases in 1828 appear to be missing the month of February.

Above all, they feared Elizabeth's return to slavery in the south. It is not clear if black Bostonians, once they discovered Elizabeth had been a slave, had bona fide information pointing to plans by the Brights to sell or transport Elizabeth south, or if they made assumptions based on Burt's knowledge. Henry Bright did, however, acknowledge his plan to travel south for the winter months, but testified that he had "no design of taking her back." Some free people of color presumably found this claim rather dubious. Later they would tell one of Boston's leading abolitionists that slaveholders like Bright "with their smooth tongues, could deceive" even prominent whites, but slaveholders "could not deceive the colored people."[205]

Bright, the former owner of Elizabeth's deceased mother, acknowledged Elizabeth's previous slave status when they lived in Alabama, but insisted he and his wife now considered her virtually a part of their own family. In fact, said Bright, his wife was an "immediate abolitionist." After Elizabeth disappeared, Bright contacted "some leading abolitionists in Boston," since he correctly assumed the child had been taken either by abolition activists or their sympathizers. Bright insisted the child was not now a slave and that he and his wife had no intention of selling her into slavery. After advising Bright to put their intentions in writing, Samuel E. Sewall, an attorney who was one of those 'leading abolitionists,' spoke to Samuel Snowden, one of Boston's prominent black ministers. Snowden, who said he "could probably find the child," relayed a message requesting a bond to guarantee that Elizabeth would not be sold into southern slavery. This request was another example of black Bostonians using their

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[205] Peter Oxenbridge Thacher, *Reports of Criminal Cases, Tried in the Municipal Court of the City of Boston, before Peter Oxenbridge Thacher, Judge of the Court from 1823 to 1842*, ed. Horatio Woodman (Boston: 1845), 492-493, 495. Located at the Social Law Library.

understanding of the law for leverage; the Supreme Judicial Court had earlier ruled that in the case of children about to be carried out of the state and into slavery, a writ of habeas corpus could be obtained and a surety required of the child's guardians. Even though no writ had been obtained, and therefore the request had no genuine legal weight, Bright consented, and Sewall made out a bond for five hundred dollars.[206]

Another attorney and abolitionist, Ellis Gray Loring, having been in contact with members of the African American community who knew about the kidnapping, told Bright he would continue negotiating while recommending that the child be given back to the Brights. Eventually, four or five days after what the Brights called an abduction and black Bostonians called a rescue, Henry Bright managed to arrange a meeting with the Robinsons. The impression from his account is that Sophia operated as the leader; Bright said "I called on Mrs. Robinson with my wife....Her husband was present a part of the time."[207]

According to Bright, Sophia Robinson gave them the runaround. After immediately acknowledging that, accompanied by her husband and her own children, she had indeed taken the child while Elizabeth was playing in the street in Cambridge, Robinson revealed she had only been acting at the behest of two unnamed white ladies, to whom she had delivered the girl immediately. She instructed the Brights to come back the next morning, and in the meantime she would speak to the women and get their permission to return the child. The next day, Robinson told the Brights to go see "the two Misses Parker." The Parker women informed the Brights that Robinson had

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[206] Ibid., 489-491, 497.

[207] Ibid., 489-490.

come to them the previous evening, after she had spoken with the Brights, and explained the situation to them. The Parkers claimed this was the first they had heard of the abduction, and that Robinson had come back in the morning, before the Brights arrived, and asked if she could bring the girl to the Parkers' house. Apparently, either Sophia Robinson had a change of heart or the Brights arrived at the Parkers before she did with the girl. At any rate, the Parker women agreed that the child should be returned, and one went with the Brights back to the Robinsons.

Returning to the Robinsons, the Brights and Miss Parker found the Reverend Snowden awaiting their arrival along with John and Sophia Robinson. Snowden, again serving as the spokesman for those members of the black community involved with what they labeled as assisting an attempt to escape, told the Brights that "some of the colored people thought the bond was not sufficient" and recommended increasing the amount. The Brights agreed. Sophia still balked. She said "some other persons had taken an interest in the child and she did not like to give it up without consulting them," and once again managed to put the Brights off until the next morning with the promise of a final resolution, one that would probably see the child returned to the Brights. When the Brights arrived at Ellis Gray Loring's office bright and early the next morning, however, they found several free people of color and no child.

Sophia Robinson's explanation is telling: she told that Brights that "notwithstanding the white people wished to them to give up the child, the colored people thought differently and were determined not to give her up *unless there was some law to compel them.*" [emphasis added] Here a portion of the black community expressed their interpretation of the law as it applied to this situation -- they hoped the law would be on their side, and

thought it should be, and despite the exhortations of the white abolitionists, refused to give up the child. There was, however, a recognition that there might be conflicting laws: the law made slavery illegal, but it also made kidnapping illegal. Ultimately a court would decide if their interpretation -- that this was a case of slavery and therefore the law against enslavement took precedence -- was a correct interpretation.[208]

In fact, in the Revised Statutes of Massachusetts, statues 20 and 21 commingled both situations: it was illegal to "forcibly or secretly confine, or imprison any other person...against his will...or kidnap any other person...or to cause such person to be sent out of this state against his will or to be sold as a slave" as well as hold anyone "to service against his will."[209] Black Bostonians essentially argued that the Brights held Elizabeth in 'service against her will,' while the Brights argued that it was the Robinsons holding Elizabeth against her will -- to which the Robinsons and others responded that they were acting lawfully by preventing the Brights from violating the state law that not only prohibited sending or selling anyone out of the state, but also declared that any slave brought into the state was considered a free person.

It is important to understand that when Sophia Robinson took Elizabeth from the Brights, it was no rash act. By the mid-1840s, a well-established network of black and white abolitionists in Boston effectively hid and relocated fugitives, and the testimony from this case indicates that the roots of this network were already in place in the 1830s. Robinson clearly acted as a part of this network. The ability to hide the child at homes other

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[208] Ibid., 490-491.

[209] Ibid., 496.

than their own indicates that the Robinsons knew who to go to. The decision to abduct Elizabeth may have been made quickly, but it was not made impulsively.[210]

Before Elizabeth was taken, a member of Boston's black community other than the Robinsons initially approached the attorney Loring and informed him that "there was a child at Cambridge, who was held by a slaveowner, and who would soon be carried into slavery." According to Loring, whose testimony cast black Bostonians in a favorable light, this person explored ways of protecting Elizabeth without breaking the law. He or she asked Loring if a writ of *habeas corpus* might free the child from the Brights. No doubt the basis of this request was an earlier ruling by the Supreme Judicial Court that in the case of a child about to be carried out of the state and into servitude, the court would grant such a writ, require a surety, and possibly even place the child with a new guardian. In fact, two years earlier, the Court had granted a writ of *habeas corpus* and recommended a new guardian for a six year-old black girl named Med who was about to be taken from Boston back to Louisiana; and in 1841 the Supreme Judicial Court ruled likewise in the case of seven year-old boy whose owner reportedly

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[210] On the organization of the Boston's black community in cases of fugitives, see Irving H. Bartlett, "Abolitionists, Fugitives, and Imposters in Boston, 1846-1847," *The New England Quarterly* 55 (March 1982), 97-110; and James Oliver Horton and Lois E. Horton, *Black Bostonians: Family Life and Community Struggle in the Antebellum North* (New York: Holmes and Meier Publishers, 1979), 97-114. Bartlett's article reprints documents from the Committee of Vigilance, the short-lived predecessor to the Boston Vigilance Committee, and notes that in the 1840s, "helping fugitives was a much more businesslike procedure" than romantic conceptions of the underground railroad. The Hortons state that the Robinsons "were part of no organized antislavery group," but appear to base this on the fact that their names may not appear on lists of antislavery groups. While this may have been the case, it is highly unlikely that the Robinsons were not connected to individuals who were formal members of such groups. Just by virtue of being a clothing dealer and knowing William Jinnings, John Robinson probably had regular contact with John Hilton, a prominent black activist in Boston from the 1830s through the 1850s. The other man who posted a surety, along with Robinson, for the adminstration of Jinnings' estate -- for which Hilton was the executor -- was John Scarlett, an African American clothes dealer who had also been an associate of David Walker.

intended to take him back to Arkansas.[211] But Loring replied that since the girl was allowed to go outside on her own, she was apparently "not restrained of her liberty" and doubted that such a writ could be obtained. The child would have to "take its own liberty." At this point, more free people of color, probably including the Robinsons, entered into this discussion. Asking Loring "what remedy there was" and "if they assisted the child to escape, whether they would be liable," they learned that "they might lawfully receive the child, but had best return its clothing." Presumably Loring advised they not keep the clothing to avoid any possibility of being charged with theft. Loring operated under the assumption that Elizabeth was seven or eight years old and therefore old enough to make some kind of conscious choice about leaving the Brights; he testified that had he known she was only five, he would have "hesitated at giving the advice I did give."[212]

Taking Elizabeth, then, was not an act of militant civil disobedience. The Robinsons and others had the option of simply taking Elizabeth immediately upon learning of the Brights' plans to return to Alabama for the winter, and spiriting her away. They clearly had the ability to hide Elizabeth. The day after taking Elizabeth, in fact, "some five or six colored people came to Robinson's house.... one of the men asked if there was a slave child in the house .... then put on its bonnet, and took her off." Sophia Robinson's sister, who gave this testimony, also commented that "all the colored people were entire strangers" to her, and suggested the child might be in Salem. Obviously, an effective network of communication and action existed in the

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[211] Thacher, *Reports of Criminal Cases*, 497. For the 1836 and 1841 cases, see *Judicial Cases Concerning American Slavery and the Negro*, ed. Helen Tunnicliff Catterall (Washington, D.C.: The Carnegie Institution, 1936), vol. 4, 506-510.

[212] Thacher, *Reports of Criminal Cases*, 493.

black community. The Brights discovered who had taken Elizabeth only because her abductors came forward. Boston's police force would not have been very helpful. It had been established primarily for squelching public disturbances, and, still in its early stages of organization, lacked a detective branch. The Robinsons and the unnamed accomplices thus stood a good chance of eluding prosecution. Instead, black Bostonians explored how they might accomplish their goal of rescuing Elizabeth while staying within the bounds of the law, and they acted only after receiving some indication from Loring that this was possible.[213]

But to stay within the law, African Americans interpreted the law. The consultation with Loring indicates not ignorance of the law, but awareness -- awareness of how the statute freeing slaves brought into the state applied, awareness of how the statute outlawing transporting or selling anyone out of the state applied, and awareness of how the statute against kidnapping might also apply. Because these three illegal acts were all bound up together in the Revised Statutes, African Americans interpreted the act of taking Elizabeth as not only lawful, but as an act preventing the commission of an unlawful act -- the selling or transporting of Elizabeth south.

This process of interpreting and applying the law was a further manifestation of black Bostonians' legal consciousness. They fully believed that the law should and did apply to this situation, that the law should and did entitle Elizabeth to protection from the Brights, and that the law should and did entitle them to rescue Elizabeth. This was not a case of kidnapping, but a case of upholding the law by protecting the rights of a freed African American girl. The decision not to hide their involvement and give up

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[213] Ibid., 495; Lane, *Policing the City*, 26-58. The move to create a detective branch of Boston's police force did not begin until 1845.

Elizabeth only if a law compelled them indicates both their belief in the validity of this interpretation, but also a recognition that the court might decide otherwise.

In the eyes of the court, this interpretation turned on whether the Brights held Elizabeth 'against her will,' and if they intended to return her to slave status. The Robinsons and some other black Bostonians, based on their own assumptions or on more concrete evidence that did not come out in court, remained convinced that Elizabeth did not willingly stay with the Brights. They were convinced there was little chance Elizabeth ever would experience freedom again once the Brights returned to Alabama for the winter. The judge, however, used a strict legal logic that circumvented African Americans' interpretation of the law.

Judge Thacher of the Municipal Court instructed the jury "that the moment the master carries his slave into a country where domestic slavery is not permitted, he becomes free." Furthermore, no person could "restrain such slave of his liberty during his continuance here...against his consent." Since Elizabeth was legally free, then, she was entitled to the full protection of the law. Nor could Elizabeth, as a free being, be held against her will or carried out of the state, either by the Brights or the Robinsons. Therefore, argued Thacher, the law entitled Elizabeth to protection against being taken against her will, and he inferred that her 'will' was to remain with the Brights, stating "it is in evidence, that the child was happy and contented with its natural protectors." He apparently based this conclusion on the Brights' testimony and the rationale that "if the child had been treated with inhumanity, any citizen might have complained in its behalf," and since no citizen had done so -- apparently ignoring the testimony by Loring that some African Americans said the child had been ill-treated -- the Brights were

humane caretakers. In fairness to Thacher, there had been testimony by Sewall, Loring, the Reverend Snowden, and the Parker sisters that cast Bright in a favorable light. But Thacher's jury instructions entirely avoided the issue of whether or not the Brights might take Elizabeth back into slavery. His definition of Elizabeth as a free legal being implied that even if she did go back to Alabama, she would have done so voluntarily; therefore, the Robinsons had no legal grounds for 'protecting' Elizabeth from re-enslavement.[214]

Thacher's jury instructions gave the jury virtually no room to do anything but find the Robinsons guilty. He described Henry Bright as acting "with humanity" and declared Bright's statements as "confirmed by every material fact." The Robinsons, on the other hand, "inveigled the child into their possession" and had "set their own will above the law." Thacher told the jury that Loring's advice -- suggesting it might be lawful for someone to assist the child in an escape, which was how the Robinsons attempted to define their actions -- was immaterial. If the jury believed the Robinsons committed this act "innocently and without an unlawful intent" an acquittal should result, but Thacher followed that admonishment by noting that "from the time the child was taken...it has been kept in secret confinement, away from its natural friends and protectors, and without their knowledge, and that the defendants now refuse to put it under the protection of the law, [and] you must judge of the act done."[215]

The jury found the Robinsons guilty of kidnapping and confining Elizabeth against her will, and not guilty of intending to convey her out of the

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[214] Thacher, *Reports of Criminal Cases*, 497.

[215] Ibid., 498-500.

state. Thacher handed down a sentence of four month's imprisonment and a two hundred dollar fine. The Robinsons promptly appealed, and bonds of one thousand dollars were posted for John and Sophia. It is likely other free people of color and some of the wealthier white abolitionists aided the Robinsons in coming up with the bond money. The appeal seems to have been drawn out for nearly a year; on October 22 of 1838, Henry Bright asked the commonwealth's attorney to drop the prosecution because Elizabeth had been returned and the fine paid.[216] Why the Robinsons and their accomplices decided to finally return Elizabeth is, unfortunately, unknown. Perhaps the specter of four months in jail proved too much; perhaps the Robinsons and others became convinced that the Brights would keep Elizabeth in Massachusetts.

Running throughout the entire episode was a struggle for power. This struggle had two inseparable focal points: Elizabeth, the object of the struggle and over whom each party wished to gain control; and the law, the tool by which Elizabeth, the object, would be gained. First by requesting a surety of the Brights, and then by trying to interpret the conflict as a case of slaveholding, those African Americans who participated in this struggle attempted to access the law's power to negate the Bright's power over Elizabeth. The Brights, initially willing to comply with the requests for sureties and negotiate through abolitionists who were also attorneys, ultimately resorted to using the law's power to get Elizabeth back.

Though it may be understandable why Judge Thacher saw the Robinsons as setting "their own will above the law," his characterization, from the Robinsons' point of view, was inaccurate. The Robinsons and their

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[216] Ibid., 500. See Thacher's footnote.

supporters believed they could locate their will *within* the law. They explored how they might rescue Elizabeth without violating the law: they began by asking an attorney if a writ of *habeas corpus* would force the court to remove Elizabeth; they asked for sureties from the Brights, modeling legal procedure; and, believing that the law was at least potentially amenable to their goals, they chose to use the law instead of defy it.

They made this choice primarily because they believed the law applied and that using legal means was the best way to guarantee Elizabeth's permanent freedom. This belief was encouraged by the commingling of kidnapping and slavery in the statutes, the earlier ruling in the Supreme Judicial Court preventing Med, the African American girl, from being taken back to New Orleans, and because the law had often been useful to black Bostonians. Ewick and Silbey have noted that "the multiple and contradictory character of law's meanings, rather than a weakness, is a crucial component of its power."[217] Ewick and Silbey are concerned less with the multiple and contradictory meanings of formal statutes and focus instead on how people interpret the law and infuse the commonplace with legality, as, for instance, John Robinson did in his Bridge Court letter. But the concept applies here as well: because the formal law could be interpreted in multiple and contradictory ways, in this case by the Robinsons and other African Americans on the one hand, and the Brights and Judge Thacher on the other hand, and because African Americans often were accustomed to being able to successfully and usefully apply the law, the law was an attractive and sensible forum for trying to secure Elizabeth's freedom.

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[217] Patricia Ewick and Susan S. Silbey, *The Common Place of Law: Stories from Everyday Life* (Chicago: University of Chicago Press, 1998), 17.

Black Bostonians had other options to ensure her freedom. The network of people who hid Elizabeth for a year, and then only gave her up voluntarily, demonstrated their power to resist the legal system. But relocating Elizabeth permanently had the disadvantage of placing her and those involved at some degree of ongoing risk, while using legal means to separate her from the Brights had the advantage of a more secure freedom. Nevertheless, those African Americans involved with this endeavor had two choices: deny involvement and find another place for Elizabeth, or use the law. They chose the law.

Not all African Americans in antebellum Boston became involved with the law and the courts for such noble principles as the Robinsons and their allies. For the most part, black Bostonians continued to come to the lower court for much the same reasons that black litigants appeared in the justice of the peace court during the first two decades of the nineteenth century: personal animosity, vengeance, or simply a fear for personal safety. But the court that now adjudicated many similar conflicts to those that Senex and other ordinary black Bostonians used so frequently during the 1810s, underwent a transformation when the town of Boston incorporated itself as a city in 1822. There had been numerous changes in the Suffolk County legal system between the end of the American Revolution and incorporation, and after 1822 a revised court system supposedly regulated the type of cases each court heard, and imposed some sense of order on the legal system. Contrary to the spasmodic changes of the first two decades of the nineteenth century, these changes would endure throughout the antebellum period. A new court, the Police Court, was created to deal with minor crime that individual justices of the peace and the General Court of sessions had formerly handled.

Composed of three justices of the peace, who rotated periodically, and who were paid a regular salary, the Police Court ended the practice whereby justices of the peace were paid by fines and court fees.[218]

The Municipal Court, established at the beginning of the nineteenth century, conducted litigation in a professional, formal manner, and retained that character into the antebellum years. This court handled appeals of decisions made by justices of the peace, along with more serious crimes. Litigants were typically represented by lawyers, some of whom, along with the judges, were highly educated members of the political elite. In the early 1820s, for instance, Daniel Webster represented defendants in criminal cases, and Josiah Quincy, who would go on to serve several terms as mayor of Boston, and eventually as president of Harvard, sat as the judge of the Municipal Court. By contrast, the justices who sat on the Police Court were frequently either aspiring office holders or drawn from the middle class.[219]

Initially, the Police Court handled a half dozen or so cases a day, which was only slightly more than Gorham typically adjudicated. The case load gradually increased, and by the 1850s one observer put the average number of daily cases at thirty-five and described days of fifty to sixty cases being nothing out of the ordinary.[220] Since individual justices, who continued to carry out other functions, took turns sitting on the Police Court, many black Bostonians

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[218] *A Volume of Records relating to the Early History of Boston containing Boston Town Records, 1814-1822* (Boston: Municipal Printing Office, 1906), 40-41. The selectmen proposed a police court for this reason in 1815. Also see Chapter Two of this dissertation, p. 99.

[219] Theodore Ferdinand, *Boston's Lower Criminal Courts, 1814-1850* (Newark: University of Delaware Press, 1992), 9-17; *A Volume of Records Relating to the Early History of Boston Containing Boston Town Records, 1784-1796* (Boston: Municipal Printing Office, 1903). See town meetings for May 18 1790, May 11 1795, March 21 1796, and April 25 1796.

[220] Ferdinand, *Boston's Lower Criminal Courts*, 9-17; Fenner, *Raising the Veil; or Scenes in the Courts*, 26-28.

would have been familiar with some of the Police Court justices. The constable system also remained in place -- George Reed, the constable referred to in the previous chapter as a regular figure in black residential areas, remained at his post at least into the mid-1830s. As they had done before, plaintiffs typically lodged a complaint with a justice of the peace or a constable. Courtroom procedure remained somewhat similar to what African Americans had known in justice of the peace courts, and cases were frequently argued by the litigants themselves.

Yet changes did occur. The criminal justice system did become more codified, and the courts more streamlined. The attorney general gained authority at the expense of individual justices of the peace, and the courts became a more useful tool for men like Josiah Quincy, who wished to secure an orderly society during a period of economic and urban growth. Michael Hindus notes that "the same values that the legal system endorsed for the sake of economic growth- certainty, predictability, and rationality- can be found in the criminal justice system of Massachusetts." But change was layered. Even though legislators and court officials were in the midst of attempting to reorganize the criminal justice system, and make it more professional and predictable through centralization, the substance of the Police Court day-to-day activities was not altered dramatically in the antebellum era. The system of private prosecution remained largely intact. The personal, face-to-face nature of adjudication, where litigants appeared before neighborhood justices of the peace, began to erode, but since those same justices sat on the Police Court, some element of familiarity lingered. Probably because of these similarities, the creation of the Police Court appears

to have had little effect on African Americans' efforts at managing conflicts through litigation.[221]

Whether or not black Bostonians appeared in court as disproportionately as they had in justice of the peace Stephen Gorham's court is difficult to ascertain. Unlike Gorham, most Boston court dockets and records only occasionaly noted if a litigant was African American, and when they did, it was generally only if the black litigant was the defendant. In 1821, a state congressional committee, concerned about the "increase of a species of population, which threatens to be both injurious and burthensome," reported a ratio of one black convict out of every 146 African Americans in Massachusetts, while for whites the ratio was one to 2140. George Levesque has documented the significant fluctuations in these ratios up to the Civil War, with black Bostonians being eight times more likely to be incarcerated than whites in 1833, to a low of less than twice as likely in 1837. Overall, between 1823 and 1843, the average proportion of black convicts was five times greater than white convicts.[222]

Breaking those numbers down a bit further for one year reveals a gendered pattern of incarceration. In 1835 the Municipal Court record book placed the total number of incarcerations made by the Municipal and Police Courts by the end of November at 253 men and 151 women. Twenty-four of the men and 34 of the women were black. Of the male convicts, then, black

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[221] Michael Stephen Hindus, *Prison and Plantation: Crime, Justice, and Authority in Massachusetts and South Carolina, 1767-1878* (Chapel Hill: University of North Carolina Press, 1980), xxii; on Quincy and others who viewed Boston's courts as a useful tool for social reform, see Ferdinand, *Boston's Lower Criminal Courts*, 15-17, 24-30, and 38-66.

[222] *Massachusetts Legislative Documents 1817-1822*, "Free Negroes and Mulattoes," House No. 46. Located at the Massachusetts Statehouse Library, Special Collections; Levesque, *Black Boston*, 384.

men composed 9.5% of male convicts, or about twice their proportion of the population; while black women made up 22.5% of female convicts. If the pattern demonstrated in the previous chapter of black women being aggressive in using the court to prosecute other African Americans, particularly other black women, persisted into the 1830s, this would partly explain the higher proportion of black female convicts.[223]

A high proportion of black prisoners means, of course, that there was a high proportion of black defendants. Because most court records in Boston inconsistently identified litigants with racial categories, it is virtually impossible to determine whether or not there continued to be a high proportion of black plaintiffs, or to determine how many black defendants succeeded in avoiding guilty verdicts.

Savvy defendants knew how to avoid the pitfalls of the court, while those unfamiliar with the courts risked being hurried along to jail, particularly as the dockets of the Police Court grew more burdensome. One court observer recalled some "poor bewildered devil," arrested for being drunk and disorderly, entering the courtroom in the morning, and stumbling out a not guilty plea. Two or three police officers quickly sprang up to attest to the defendant's guilt, and while the accused protested his innocence, the judge wrote out the sentence. Other witless defendants fell prey to lawyers. The "'pettifoggers" and "blood-suckers" waited outside the jail cell inside the courthouse and told the hapless defendants, as they came out of the cell on their way to a hearing that he, the lawyer, could get them "out of this scrape" for $15 in advance "to pay court expense." A novice defendant would probably have been unaware that there would be no court expense to pay if he

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[223] *Boston Municipal Court Record Books,* November 1835.

or she was acquitted. Without an "able attorney," the lawyer told the defendant, a six-month sentence in the House of Corrections loomed. Most defendants were brought to the Police Court for minor charges; small fines or sentences of a few days to a few weeks were common. Some lawyers may have been helpful; many were certainly unscrupulous.[224]

The jails in which these convicted black defendants served out their sentences made the dangers of being taken to court a serious matter. In 1808 a visitor to Boston's state prison in Charlestown, just across the river from the city, was struck by "the high ramparts, the massy walls, the comfortless cells, scarcely admitting the light of heaven." This visitor did observe "a number of ameliorating circumstances" such as clean cells, opportunities to learn a trade, and that the "beer is the most palatable I have ever tasted." But most convicted defendants of less serious crimes wound up in the municipal prisons that likely had few, if any, such amenities. An antebellum poem described the Leverett Street jail as

> Here's the place which men (for being poor)
> are sent to starve in,
> Rude remedy, "I trow, for sore disease,"
> Within these walls stuffed by damp
> and stench doth hopes fair torch expire.

This particular jail sat about twenty feet below street level, and passersby could view the jail through the iron railings on the sidewalk. The prisoners within could be heard cutting stone in the prison yard, and their only glimpse of freedom came by "the aid of a small mirror" with which they might steal "a glance of the free denizens as they passed along Leverett Street." Defendants convicted in the Police Court typically wound up in the House of Corrections, where female convicts spent their days making men's clothing,

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[224] Fenner, *Raising the Veil*, 18-19, 28.

and male convicts crushed stone to be used for street repairs, often working while shackled to ball and chain. While an early traveler's guide to Boston characterized the jailers and administrators as humane and remarked on the availability of good medical care, the guide also called the prison a "gloomy place."[225]

While some African American litigants surely fell victim to harried judges and unscrupulous lawyers, others knew how to function effectively within the legal system, often from past experience or by learning from their neighbors' courtroom escapades. William Weevis, a light-skinned black mariner, who celebrated "the termination of each successive voyage in a flowing can of grog," came to court accused by his much darker-skinned wife of beating her with his belt. Weevis painted a picture of himself enduring bitter storms at sea, motivated by the thought of returning home to his wife. When he arrived, she was at the theater, in the gallery, with another man, and apparently had been doing this regularly. As they walked home, she was swearing at Weevis mightily. He tried to put his arm around her; she slapped him. He kissed her; she threw a plate at him. She told him she had another man in town that she preferred. "By gum" he said, "You've worn the breeches long enough, and may I be tetotally d— if you wear 'em any longer" and took off his belt and beat her over the shoulders. The judge admonished him, especially since he was "a stout man," for losing control with such a small woman and found him guilty. But the judge only fined him one dollar with no jail time since he had been "provoked". During an era of threatened

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[225] Judith Sargent Murray to Anna Parsons Sargent, August 31, 1808. Judith Sargent Murray Papers, Mississippi Department of Archives; Leverett St. jail described in Crichton, *Old Boston;* the House of Corrections described in Abel Bowen, *Picture of Boston, or the Citizen's and Stranger's Guide to the Metropolis of Massachusetts, and its Environs* (Boston: 1829), 80-81. Located at the Bostonian Society Library.

patriarchy, Weevis effectively used gender roles to transcend race by depicting himself as a hard-working man asserting control over his unfaithful and unruly wife.[226]

African Americans by no means came solely or even typically as defendants; as in the justice of the peace court, many black defendants were brought to court by black plaintiffs. Their familiarity with the courts prompted many black Bostonians to resort to the courts for settling private matters even when other methods of managing conflict were available. Perhaps the most notable example occurred when delicate fractures within the black community surfaced in the African Baptist Church, founded in 1805 as the first black church in Boston. The African Baptist Church had a history of abolitionist activism; Thomas Paul, the pastor until 1829, was an active supporter of the movement, and William Lloyd Garrison and others began organizing the New England Anti-Slavery Society in the church's basement classroom in 1832.[227] But in part due to that activism and divergent views on colonization, the church also began to build a history of dissension. In the 1830s, as the following list indicates, the leadership was wracked with upheaval.

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[226] *Selections from the Court Reports*, 205-210; on 'threatened patriarchy,' see Paul E. Johnson and Sean Wilentz, *The Kingdom of Matthias; A Story of Sex and Salvation in 19th-Century America* (New York: Oxford University Press, 1994).

[227] Edward D. Smith, *Climbing Jacob's Ladder: The Rise of Black Churches in Eastern American Cities, 1740-1877* (Washington: Smithsonian Institution Press, 1988), 47-51.

Table 4

African Meeting House Pastors, 1832-1841

	Arrived	Left
Thomas Ritchie	10/32	11/33
Samuel Gooch	11/33	5/35
John Given	5/35	?/36
Armstrong Archer	2/37	?/37
George Black	11/38	7/41

In the span of nine years the Joy Street congregation saw five pastors come and go, and endured lenghty periods with no pastor. In 1840, George Black led forty members out to form Twelfth St. Baptist, effectively ending a decade of conflict. This division was undoubtedly due in large part to disagreements over how much time and energy should to devoted to abolitionism, as the Twelfth St. church became deeply involved in the abolition movement.[228] But in the midst of that decade of conflict, members went outside the church in an attempt to resolve some of their problems.

The conflict ostensibly grew out of a sharp disagreement over the political leanings of the African Baptist Church. The Reverend John Given, who had taken over the pastorate in May of 1835, reportedly had "fallen under the suspicion of his colored brethren" as a supporter of colonization. Rumors of visits to Liberia fueled suspicions. Never a popular cause among northern African Americans, colonization nevertheless did find support among a minority of free blacks. Some members of the African Baptist church, perhaps in part motivated by a desire to ensure that Given had no

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[228] *The New England Historical Genealogical Register* (Boston: Samuel G. Drake, 1847) vol. 1. The Register lists all the ministers, black and white, in the Boston area from 1620-1847; Mechal Sobel, *Trabelin' On* (Westport: Greenwood Press, 1979), 258; Smith, *Climbing Jacob's Ladder*, 51.

opportunity to win any converts over to colonization, decided to starve him out by refusing to pay pew rents. But they still showed up for Sunday services. The church leadership responded by sending home the pew cushion of at least one member, George Putnam, in effect notifying that him that he was no longer welcome.

Putnam did not let the issue die that easily. Putnam used a legal argument, arguing that the church was not an incorporated body, and therefore could not demand pew rent or sue him for nonpayment. He marched into church with a young boy carrying his pew cushion. Cyrus Foster, a member of the committee that sent Putnam's cushion home, told Putnam that he would by no means be allowed to set his cushion in its customary place. Foster may have then tried to grab the cushion. Thomas Dalton, another church member, "stripped off his coat and flew to Putnam's assistance." With tensions escalating, Putnam seized Foster by the throat, and Charles Virgin Caples, formerly a minister and another ally of Putnam's, managed to get hold of the controversial cushion and place it in the pew. Due to the "uproar and confusion created by this contest," Sunday services were suspended for the day.[229]

Later that evening, members of the church met and voted to instruct the church committee to take the matter to the Police Court. Putnam, Dalton, and Caples were charged with "disturbing a religious meeting" and subsequently ordered to put up a surety of $60 each to ensure their appearance at a Municipal Court trial. Not to be outdone, the trio, along with two other members, lodged a counter-charge of "disturbing a religious meeting" against Foster and three of his allies. Perhaps by the time the case came to the

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[229] *Selections from the Court Reports*, 50-51.

Municipal Court, tempers had cooled. After one day the case was postponed, and did not appear in this court's record books again. The case was not dismissed, however, which at least ostensibly gave the court continuing authority to intervene should the dispute flare up again.[230]

The Sunday scuffle involved some of Boston's most prominent black citizens. As ministers, Caples and Given occupied positions of leadership. Thomas Dalton, a former confidante of David Walker, had long been a leader in agitating against racist policies and slavery. Cyrus Foster, a deacon at the church, was also a Revolutionary war veteran.[231] All of these men were no doubt aware of biblical warnings against using secular courts to settle disputes between believers. Churches had internal means of dealing with disputes between members. But in this charged dispute, they believed the court's authority was a more effective means of disciplining one another than traditional church procedures. In a manner very different than Richard Crafus, but with a similar result, the leaders of the African Baptist church furthered the law's function of social control by opening the doors of the church to the authority of the court. In this incident black Bostonians used the court as an arbitrator to reinforce acceptable behavior, even in the sacred world.

Most black litigants did not occupy such positions of prominence, and most of the conflicts bringing African Americans to court did not stem from political divisions over the place of abolitionist politics in the church. Far more common were domestic and neighborhood disputes like those of

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[230] *Selections from the Court Reports*, 51; *Boston Municipal Court Record Books*, August 1835, cases 333 and 334.

[231] Peter P. Hinks, *To Awaken My Afflicted Brethren: David Walker and the Problem of Antebellum Slave Resistance* (University Park, PA: Pennsylvania State University Press, 1997), 77.

William Weevis and his wife. When Rosanna Turney charged Samuel Wallace with assault, Wallace got wind of her intentions and quickly obtained a writ of slander against Turney. Wallace managed to have his slander charge prosecuted first, probably in the Court of Common Pleas, resulting in Turney being in jail when her case against Wallace came to the Police Court. The court issued a writ of *habeas corpus* to enable Turney to testify, foiling Wallace's plan. Turney produced two black women as witnesses, but, like William Weevis, Wallace argued that Turney provoked him with a torrent of abusive language and by refusing to get out of his way. Even at that, claimed Wallace, he had only given her a shove. The justices found him guilty, but fined him a mere fifty cents.[232]

Not all black men who assaulted women escaped so easily. In 1834 Richard King appeared in the Police Court after he attacked his wife Sarah and then jumped down a cistern in an attempt to kill himself. The water was too shallow, though, and eventually Reverend Taylor, a well-known minister of seamen, black and white, succeeded in getting King to come out. King also told a story of his own long-suffering with an unfaithful wife. But this was no simple assault. King reportedly struck Sarah several times on the neck with a hatchet, prompting a charge of attempted murder. The seriousness of the charge required the Police Court to bind him over for trial at the Municipal Court, which, noting King had "grieviously beat bruise wound, & cut to the great hazard of [Sarah's] life," sentenced King to four years hard labor at the state prison in Charlestown.[233]

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[232] *Selections from the Court Reports*, 135-137.

[233] Ibid., 144-145; *Boston Municipal Court Record Books*, 1834. A brief biography of Rev. Taylor appears in Crichton, *Old Boston*, "Father Taylor."

African Americans' involvement with the courts in the antebellum era, had at least one significant new development. Media scrutiny of court proceedings had become increasingly common, and it rarely worked to the advantage of free people of color. The combination of the presence of court reporters and an intensifying racism made black litigants into public fodder for evolving racist ideologies.

The persistent presence of African Americans in the Police and Municipal Courts garnered considerable attention from court reporters. Ball Fenner, who wrote what he considered an exposé on the lower courts in 1856, described the omnipresent court reporters as "fellows of infinite jest." African Americans in particular attracted their attention. Fenner reported that "when a colored individual is arraigned for some minor offence, they always seemed determined to have a little sport among themselves."

One young biracial woman with dark blue eyes, arrested during a raid on a brothel, had been seen earlier by a reporter when she sang at "a negro concert." The reporter knew she had " sweet and melodious voice" and he knew the clerk of the court had a fondness for music. Taking the young lady aside before her arraignment, the reporter told her to enter her plea in song. She complied, singing a line from "a well-known German song, 'Thou, thou, know'st that I love thee.'" The judge, clerk, and officers sat in stunned silence. Recomposing themselves and asking again for her plea, she answered not guilty and then sang 'Let me go where fate may lead me, Let me cross yon troubled deep; Where no strange ear shall greet me, Where no eye for me shall weep.' The officers gave minimal testimony, the clerk declared "That woman can't be guilty of any *crime*!", and the judge discharged her.[234]

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[234] Fenner, *Raising the Veil*, 121-122.

During the 1830s and throughout the antebellum era, newspapers in Boston and other northern cities ran court reports as regular features for their readers. The courts became, in some respects, a kind of free public theater. Centralizing the lowest rung of the criminal justice system, which had been the individual neighborhood justice of the peace courts, into the Police Court no doubt spurred on the theatrical aspect by giving spectators and reporters a predictable performance. Complainants could show up at the office of a justice of the peace with no warning and at all hours, but the Police Court provided a forum with regular hours, and the courtroom in the recently completed Suffolk County Courthouse was more accessible and roomy for reporters and spectators. Some of the spectators would have been litigants waiting their turn on the docket. Boston's lower courts likely mirrored Philadelphia's courts, described by Allen Steinberg as a "free popular theater, with friends and neighbors as the performers."[235]

African Americans appearing as 'performers' in court, unwittingly or not, fit within a broader antebellum context of public 'black' performance for white entertainment. African Americans attracted attention in Boston, sometimes in unusual ways. In the mid-1830s, when the Washington Hotel served as "the Rubicon for all notables who visited Boston" from Chief Osceola to Andrew Jackson, a New York military escort by the name of the Lafayette Guards camped out on the hotel grounds for a week, feasting and drinking. One of the highlights of the week was entertainment provided by some of the regiment's black servants, in particular one "round, bullet-headed little fellow." The officers wagered on his butting ability, and one

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[235] Allen Steinberg, *The Transformation of Criminal Justice: Philadelphia, 1800-1880* (Chapel Hill: University of North Carolina Press, 1989), 18. Ball Fenner mentions spectators in Boston's courtrooms in *Raising the Veil.*

witness remembered seeing him "dive through the panel of a stout door, disappearing bodily into the room...without displaying the slightest sign of mental or bodily perturbation." This so impressed local boys that they attempted to imitate him, only to acquire many sore heads. The black servant's feat actually had deep African cultural roots, and similar scenes whereby African Americans entertained whites in this manner persisted at least through the Civil War.[236]

There had been a long history of public performance by Africans and African Americans when eighteenth century slaves in the Boston area and other northern towns adapted white election holidays into distinctly African American celebrations. Though some whites in the eighteenth and nineteenth centuries disapproved of the noise, drinking, and general revelry, others enjoyed and participated in the week long festivals. After electing or appointing a black king or governor, the inaugural parade's "music and flying colors made the black election parades something special to white and black New Englanders alike." Other activities during the festivals included different forms of combat, foot races, and dancing. In Boston, the tradition continued at least sporadically into the nineteenth century. Historians have noted the cultural significance of these festivals, but have perhaps overlooked the significance of the activities as public performances before white observers. Even though Election Day festivities seem to have become sporadic before ceasing altogether in 1831, in Boston the black parades, lead by the legendary Richard 'King Dick' Crafus and composed of a "squad of colored

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[236] Crichton, *Old Boston*, chapter one. W. Jeffrey Bolster describes head-butting among black sailors from New England to Brazil in *Black Jacks*, 119-120; also, David A. Cecere has documented white Union soldiers from New England being entertained by head-butting black soldiers during the Civil War. See Cecere, "Carrying the Homefront to War: Race and New England Culture during the Civil War," in *Looking Homeward*, ed. Paul Cimbala (New York: Fordham University Press, 2000).

brethren of all sizes an costumes, marched around and through Boston Common "amid the shouts and laughter of the assembled crowd who came to witness." That whites gained something from watching is apparent; it was the only time of public gathering or celebration that white men did not chase black Bostonians off the Commons.[237]

Though the laughter may have had moments of genuine innocence, much of it was no doubt a part of the heightening public denigration of African Americans throughout the North. Black Balls and parades also elicited derision from white observers; in 1828 *Freedom's Journal* reprinted a story from the *Pennsylvania Gazette* on an alleged disturbance at what the *Gazette* claimed was a "fancy ball." Supposedly a group of white boys attempted to break up the ball by scaring carriage horses and insulting the women. *Freedom's Journal* claimed the ball had been a "plain" one, and that no disturbance had taken place, and that actually a white ball on the same night had degenerated into an unruly affair. Regardless of which report was correct, the Gazette's portrayal of the black celebrants as pretentious buffoons epitomized many public renderings of African Americans.[238]

Court reports did likewise. When Rosanna Turney prosecuted Samuel Wallace, she was labeled a "dandizette." The *Boston Morning Post* described one of her witnesses as "a real grandee--of middling stature, but magnificent breadth of beam, and would come to a good round penny if bought by weight. She was a first-chop pattern for an empress of Morocco....the expanding skirt of her figured calico gown, diverging equi-distant from her sable and stable

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[237] Piersen,*Black Yankees*, 122-123; Reidy, " 'Negro Election Day' "; Crichton, *Old Boston*, "Big Dick, King of darkies"; Roediger, *The Wages of Whiteness*, 101; White, " 'It Was a Proud Day'," 17.

[238] *Freedom's Journal*, March 14, 1828; Gary Nash, *Forging Freedom*, 253-259.

ankles, in branching out in picturesque folds of light and shade, covered an immense area, like a field-marshal's marquee." The depiction concluded by comparing her to "the cloud-capped dome of the State House."[239]

In the nineteenth century, what white observers gained beyond simple entertainment was probably similar to what David Roediger argues white audiences of blackface minstrel shows gained: defining whiteness against the outlandish behavior of blacks. Eric Lott has also pointed out that an important aspect of the popular support for minstrel shows was the simultaneous attraction and repulsion many whites experienced. Black parades and celebrations likely stimulated similar reactions among gawking white Bostonians. At the same time these celebrations were disappearing from Boston, minstrel shows took the stage. Robert C. Toll places the beginning of the touring minstrel shows around 1830, and they appeared in Boston at about the same time. Shortly after the demise of Negro Election Day on the Commons in 1831, a well-known nineteenth-century chronicler of Boston's police force made a note of "Jim Crow Rice *jumping* at Tremont Theatre" in 1833. During the 1840s, Ordway's Aeolian Vocalists, a "company of Negro Serenaders," performed regularly at Harmony Hall in Boston on Friday and Saturday evenings. Though the Aeolian Vocalists were described as "negro minstrels," the performances were a classic example of a blackface minstrel show, one so popular that it did not have to tour, enjoying a ten-year run in Boston. It soon out grew the capacity of the Province House, an old Boston mansion, prompting its conversion into a theater with the Aeolian Vocalists as the headline act in 1851, prompting a public "howl of righteous indignation... giving to the citizens farce in the place of tragedy."

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[239] *Selections from the Court Reports*, 135-137.

An 1847 program listed a three-part performance of "Whites and Ethiopians": part one "As Citizens," traditionally performed without blackface, partly to ensure the audience knew the performers were actually white; part two "As Northern Darkies"; and part three "As Southern Darkies."[240]

The north-south division of the blackface performances is intriguing, especially since one of the songs, "A Darkie's life is always gay," sung in the northern part of the show, was no doubt a take off of "A Nigger's Life Is Always Gay." The latter song, a favorite on the minstrel circuit, focused on depicting slave life as a day of hard work. But minstrel shows typically depicted northern African Americans as "lazy, pretentious, frivolous, improvident, irresponsible, and immature -- they very antithesis of what white men like to believe about themselves." The most common characterization was the black man as "completely self-centered dandies...who thought only of courting, flashy clothes, new dances, and their looks." Furthermore, on stage these pretentious upstarts who "tried to live like 'gemmen'.... [were] jailed for violating laws they did not understand." The "Northern Darkies" part of the show mocked and ridiculed northern African Americans, in part by communicating that a free black man or woman in the North was really no different than an enslaved black man or woman in the South. Several of the song titles in the northern part of the show had a southern flavor, including "Sugar Cane Green" and "I'm Off for Charleston." Ordway's Aeolian Vocalists was one example of a comprehensive and

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[240] Robert C. Toll, *Blacking Up: The Minstrel Show in Nineteenth-Century America* (New York: Oxford University Press, 1974), 27-32, 68; Eric Lott, *Love and Theft: Blackface Minstrelsy and the American Working Class* (New York: Oxford University Press, 1993), 20-21; Savage, *A Chronological History of the Boston Watch and Police*, 73; Crichton, *Old Boston*, "Old Province House." The 'Jim Crow Rice' that Savage mentioned was undoubtedly Thomas D. Rice, who Toll credits with creating and popularizing 'jump Jim Crow'.

efficient minstrel show constructing whiteness by denigrating blackness, whether it appeared in conditions of freedom or bondage.[241]

Minstrel shows and court reports both served to crystallize ideas about race that were still forming in antebellum America. African Americans had no control over whites' appropriation and uses of black culture in the minstrel shows. The tragic irony of the court reports was that the propensity of African Americans to use the courts, a propensity fostered in part by the courts' intentional accessibility and attempted impartiality, provided material for the court reporters. The Police Court remained accessible after the incorporation of Boston, and as the previous chapter indicated, even though adjudication in the lower courts may have been affected by racism, the differences in conviction rates were not great enough to drive black litigants away. When African Americans used the law to gain control over circumstances important in their own lives, they often did so because they believed the law could provided useful remedies. The court reports, however, transformed these attempts into public performances. When one black man named White brought an action of trover to recover what he believed was his parrot from a white man, he judged the matter important enough to bring witnesses and a lawyer. White's case may have been solid. But under the hand of the court reporter, White became a dim-witted and petty fool pursuing a trivial matter. The report mocked White for bringing the case to court, and then appealing the Police Court's acquittal of the white defendant, when at most "the value of the parrot was estimated at *five dollars.*"[242]

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[241] Crichton, *Old Boston*, "Old Province House"; Toll, *Blacking Up*, 68-71; Roediger, *The Wages of Whiteness*, 120.

[242] *Selections from the Court Reports*, 25; on racial formation in the north, see George M. Fredrickson, *The Black Image in the White Mind: The Debate on Afro-American Character and*

Other court reports closely mimicked the kind of depictions the minstrel shows perfected. In contrast to the story in chapter one of the eighteenth-century black man whose extremely literal interpretation of the law enabled him to successfully dodge being persecuted for not carrying a lantern in the darkened streets, one court report mocked a nineteenth-century black man's attempt to elude prosecution by his own 'cleverness.' Robert Gardner came to court charged by the city marshal for smoking a cigar in a fire-conscious tinderbox part of the city. Gardner, however, pointed out that he had actually been smoking a pipe, and since he was specifically charged with smoking a cigar, he should be acquitted. The court promptly dispatched a messenger to get the city marshal to amend the charge. The newspaper described Gardner as greatly amused by the all the trouble the court was going through -- for a moment, it appeared that this poor bootblack held the upper hand. But the court report quickly restored the proper hierarchy by turning Gardner into a smug fool, concentrating in particular on prominent physical racial markers. Gardner, "whose face shone like his customers' polished boots" had been "licking his purple lips with his poppy-red tongue" when he believed he had trumped the court, "didst look blue...as blue as a black-a-moor could look" when the court fined him five dollars, while his "twine eyeballs glistened, and shot their quick gleams crosswise over [his] unpretending nose" as he pressed "the broad heel" into the carpet -- implying that Gardner had come to court barefoot. The court report painted a blackface performer for the newspaper's readers, many of whom had no doubt been to a minstrel show.[243]

Destiny, 1817-1914 (New York: Harper & Row, 1971), 97-129; on the role of minstrel shows in racial formation, see Lott, *Love and Theft*, and Roediger, *The Wages of Whiteness*.

[243] *Selections from the Court Reports*, 92-93.

Court reports in the newspapers rendered another kind of black public performance, even though it was not intended as a performance by black participants. Nevertheless, court reports transformed black litigants into spectacles for white readers. Ironically, the young African American chanteuse who actually did perform in the courtroom was one of few black litigants to come close to being favorably portrayed by court reporters. In general, court reports depicted black litigants as pretentious, deceptive, violent, or bumbling, and at best naive. The church dispute, William Weevis, Richard King, the dispute between Rosanna Turney and Samuel Wallace were all reported in mocking tones, sometimes subtle and sometimes obvious. Weevis' hair was described as "mongrel," and his wife as having a complexion "one shade darker than a lump of coal in a cloudy day." Wallace was a "mulatto exquisite," and Turney's skin was "some shades darker--say the color of a dun cow." Thomas Gill, perhaps the dean of court reporters, made plain his racism when he criticized a jury for freeing a white woman who, in his opinion, was an unsavory character. His evidence for her deviancy: "she is now the house-keeper of a colored man...[and] two years ago, she became the mother of a colored child." Another column he wrote described a formerly married woman lured into prostitution, and "as if her cup of shame was not already full enough, Watchee [a watchman] here added that he 'had been called to take her out of a colored house, in Page's court, where she was hugging a nigger round the neck, and that the nigger could only get rid of her by chucking her out of doors.'" For Gill, such familiarity with African Americans represented the depths of depravity.[244]

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[244] Ibid., 158, 181.

But, like the minstrel shows, humor and ridicule, not indignation, was the usual method of making black litigants into public spectacles. One black man, who successfully prosecuted two sailors for assault in the Police Court, became a different kind of victim in the newspaper report. The paper reported that sailors "*licked a nigger* in Ann street. It might have been supposed that such an abolition taste carried its own penalty with it; but our courts will not allow any such public indulgence of the licking propensity. Therefore they had to pay for their peculiar gratification." The black victim, who became the protagonist in court, was slapped down again as the public recounting made him an object of ridicule and identified the white assailants as objects of favorable humor.[245]

Southern immigrants, particularly "a genuine African, or one of African descent, who knows nothing of our courts of law" provided especially rich material. Characterized as polite but ignorant, they supposedly called the judge 'General' and the clerk 'Yer Honor.' One recently freed slave was cast as a "comical negro witness" who, when asked of his past, said he was a slave in Virginia, but "I'se my own nigger now! The free darkey shook his sides with laughter...many of the court officers and spectators involuntarily joined him."[246] What the court officials, spectators, and court official missed, however, was the import of this former slave's public declaration in court of his transformation from a person with no rights to a free legal being whose testimony, impermissible in the south, now had legal weight.

Court reports and minstrel shows went hand-in-hand so far as the lampooning of aspects of black life that were of some importance to African

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[245] Ibid., 87.

[246] Fenner, *Raising the Veil*, 238.

Americans. They differed, however, in complexity. Minstrel shows engaged in a complex pattern of cultural borrowing whereby whites ridiculed African Americans by mirroring black culture -- and sometimes mirrored blacks imitating whites. Court reports did not possess the degree of intricacies. White reporters did not mirroring black behavior; they simply and blatantly mocked it. Eric Lott argues that minstrel shows functioned to repress genunine interest in black life by ridiculing black life, and while this dynamic may have been present in the court reports, the primary function was undermining any notions of black citizenship. The reaction of the court officials and spectators to the Virginian freedman's assertion that he was now his own man spoke to the uneasiness many whites felt about free people of color asserting rights and citizenship. Because whites were not willing to undermine the law by denying this man the right to testify, laughing at the "free darkey" served to assuage, but not erase, discomfort with African American participation in such an important social institution as the law.[247]

In the antebellum era, using the law to manage daily life sometimes became something of a two-edged sword. The black man attacked on Ann Street benefited from being able to punish his assailants, but he and other African Americans who came to court -- which was intended to be accessible -- attracted unwanted attention that contributed to the construction of whiteness through the continuing stereotyping of black men and women. Even informal manifestations of legal consciousness could attract unwanted attention. When a North End black man disappeared and his body surfaced two days later at Charlestown, a group of black men apparently gathered together for an informal inquest. The newspaper report noted that this was

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[247] Lott, *Love and Theft*, 6.

common practice. African Americans probably did this to determine if foul play had been involved, especially given the North End's reputation for bawdy taverns and violence. The *Boston Evening Transcript*, a paper never sympathetic to free people of color, exploited the occasion to pillory the efforts of the black 'jury' in minstrel show fashion, reporting that they "brought in a verdict something as follows: 'Dat going home one berry dark night, he fell from the wharf, and was killed; and the tide coming in strong, it floated him over to Charlestown, and he was *drowned;* dat the wedder being berry cold, he *froze to death*!'" Not content with depticting these black men as such great fools that they believed the man could drown and then die again from hypothermia, the paper recorded the possibly apocryphal witticism of the coroner, "who was very waggish, nothwithstanding the solemnity of the occasion, [and] said, 'You may as well add *died in the wool!*"[248]

Nevertheless, in the face of public ridicule, African Americans continued to employ legal beliefs in a variety of ways, and, as the next chapter documents, African American leadership in particular became more vocal and active in pushing their interpretation of how the law should benefit the black community. Whereas most black Bostonians wielded a legal consciousness in more mundane or personal matters, as John Robinson had in dealing with the obstruction of Bridge Court, other activist members of the black community also employed legal beliefs in the public arena of ideas to argue for their rights as citizens. The antebellum articulation of an African American identity based on the Declaration of Independence and the Constitution was in some ways a natural evolution stemming from the long history of legal consciousness among free people of color, and served as a

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[248] *Boston Evening Transcript*, March 24, 1840; on the reputation of the North End, see Horton and Horton, *Black Bostonians* 34-35; Levesque, *Black Boston*, 377-378.

counterpoint of sorts to the ways in which minstrel shows, court reports, and other cultural and social forces attempted to exclude African Americans from any claim to an American identity.

Chapter Four

From "No Country!" to Our Country: African Americans Defining Themselves and the Boundaries of Rights and Citizenship, 1773-1855

During the early republic era, African Americans in Massachusetts and throughout the North faced an array of challenges. Minstrel shows cast blacks as exotic 'Others." Pressure on black laborers mounted from job competition with lower class whites. Antagonistic and paternalistic whites in the colonization movement attempted to remove African Americans from the nation, and proslavery forces challenged the right of African Americans to be called citizens. Amid the strain of surviving in this environment, ordinary free people of color used the law as one tool to retain some kind of control over daily life. At the same time, black leaders used a legal rights ideology to challenge exclusion and racial subordination.

Black writers and orators, who at best had expressed a hesitant and qualified connection to notions of American nationality in the late eighteenth and early nineteenth centuries, began to respond with determined definitions of themselves as American in the second decade of the nineteenth century. During the Revolutionary War and the first decades of the Early Republic, black leaders expressed virtually no allegiance to the ongoing construction of an American identity. But nineteenth-century black leaders articulated a vision of Africans as Americans, sparked particularly by the abolition of the slave trade in 1808 and the rise of the colonization movement in the next decade. As slaves and free blacks had done during the

Revolutionary era, they validated this African American identity in part by appealing to a biblical view of human rights and a natural rights philosophy. Increasingly, however, they buttressed black identity formation by making a rights discourse the central part of the argument for full inclusion in the polity. Coinciding with the rise of black parades as a public and confrontational means of asserting African American citizenship, black leaders constructed an African American identity intimately connected to legal notions of citizenship and rights stemming from the Declaration of Independence and the Constitution, thereby finding another means of publicly reinforcing to both white and black Americans an African American identity.[249]

Massachusetts slaves sensed, in the 1770s, that the time was ripe to push for freedom. Cognizant of revolutionary rhetoric and hopeful that it might provide the impetus for freedom, slaves petitioned the legislature four times for freedom. Each petition, delivering a qualified challenge within the respectful and deferential language that characterized most eighteenth-century petitions, attacked slavery with different strategies. The first, submitted in January of 1773 by slaves in Boston, pointed out that slaves would make good subjects, "able as well as willing to bear a Part in the Public Charges," and that despite the bitter circumstances most found themselves in,

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[249] On African Americans' use of biblical and natural rights ideologies in Revolutionary era discourse, see Gary Nash, *Race and Revolution* (Madison: Madison House Publishers, 1990), 57-87; and Thomas J. Davis, "Emancipation Rhetoric, Natural Rights, and Revolutionary New England: A Note on Four Black Petitions in Massachusetts, 1773-1777," *New England Quarterly* 62 (March 1989), 248-263; on black parades and their connection to citizenship and identity, see Shane White, " 'It Was a Proud Day': African Americans, Festivals, and Parades in the North, 1741-1834," *Journal of American History*, 81 (June 1994), 13-50; and David Waldstreicher, *In the Midst of Perpetual Fetes: The Making of American Nationalism, 1776-1820* (Chapel Hill: University of North Carolina Press, 1997), 294-348.

slaves had already demonstrated, their virtue and faith, and would continue to do so. In one of the more striking statements, the petitioners cried out "We have no Property! We have no wives! No children! We have no City! No Country!"[250]

Slaves could and did own property; they could and did have wives and children. The petitioners' plaintive cry was intended to make clear the desperate circumstances engulfing most black men and women. All slaves, regardless of whether or not they owned property or had family, shared a lack of control over their future. The loss of family and property was always a genuine risk should an owner decide to sell a slave south or to the West Indies, a point the third petition, offered in 1774, made clear when the petitioners protested that "we are no longer man and wife than our masters or mistresses thinkes proper" and grieved the loss of children "taken from us by force and sent maney miles from us." The legal status of slaves as spouse or parent was always in peril. The rights of the master to sell his chattel trumped any rights of the slave. And for virtually all black men and women, slave or free, the poignant cry of "No Country!" rang especially true.[251]

In the midst of the revolutionary change in America, the black peoples of Massachusetts found themselves in the midst of revolutionary changes in identity. While white Americans, busy constructing and validating an American identity distinct from English nationalism, "imagined themselves as a separate people," free and enslaved blacks were, in many ways, already a separate people.[252] There was no country with which they identified. Most

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[250] The four petitions are reprinted *A Documentary History of the Negro People in the United States*, ed. Herbert Aptheker (New York: The Citadel Press, 1951), vol. 1, 5-10.

[251] Ibid., 9.

[252] T. H. Breen, "Ideology and Nationalism on the Eve of the American Revolution: Revisions Once More in Need of Revising," *Journal of American History* 84 (June 1997), 34.

slaves and free blacks, the majority of whom were at this point second or third generation, had been in New England long enough that identification with African roots was through a generalized and idealized Africa. The petitions of 1774 and 1777, likely made by the same authors, and probably relying on a combination of personal memories with what they had heard from other African-born slaves, nostalgically recalled Africa as "a Populous Pleasant and plentiful country." Though Africa remained a powerful source of identification and culture, there was no specific reference to ethnic or geographic origin.

Through a blend of a biblical worldview and natural rights ideology, black petitioners did place slaves within a broader human family. In a Massachusetts newspaper, Cesar Sarter, a Newburyport freedman, called on white colonials to extend "the *natural rights and privileges of freeborn men*" to slaves. Since he and many other slaves had been born free in Africa, those rights applied to them as well. The implication of his argument was that even those who had been born into slavery should be able to expect "the same *natural rights of mankind.*" Sarter stretched the revolutionary rhetoric across the Atlantic, in essence arguing that natural rights knew no geographic or color boundaries. He drove home his point by describing the physical and emotional horrors of captivity, and asking if whites could truly claim to be living out "that excellent rule given by our Saviour, *to do to others, as you would, that they should do to you.*"[253]

The first of the four freedom petitions to the Massachusetts legislature used similar strategies by pointing to both public opinion and God who "hath

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[253] Cesar Sarter, "Essay on Slavery," reprinted in Nash, *Race and Revolution*, 167-170; on the natural rights ideology in the four freedom petitions, see Davis, "Emancipation Rhetoric, Natural Rights, and Revolutionary New England."

lately put it into the Hearts of Multitudes on both Sides of the Water," along with "Men of great Note and Influence," to push for black emancipation. The second petition, submitted just four months later, demonstrated that the black petitioners were well aware of the arguments white colonials were making in response to Parliament's attempts to reassert its authority over the colonies in the early 1770s. The petitioners expected "great things from men who have made such a noble stand against the designs of their *fellow-men* to enslave them," namely, for them to take the sensible next step and "give us that ample relief which, as *men*, we have a natural right to." This petition also exhibited the lack of attachment these slaves had to the colony. Expressing a desire to "leave the province, which we determine to do as soon as we can," the petitioners planned a return to Africa once they had earned sufficient funds. The following year, the third petition claimed "a naturel right" to freedom "within the bowels of a free and christian country," and issued a biblical rebuke, asking "How can the master be said to Beare my Borden when he Beares me down whith the Have chanes [heavy chains] of slavery an operson." Furthermore, this petition shrewdly pointed out the lack of any law ever declaring their children slaves --children who had been born in a free country -- but custom had locked their children into slavery just as surely as if there had been such a law. One of the two petitions offered in 1777 borrowed from the Declaration of Independence, arguing that slaves had "in Common with all other men a Natural and Unaliable Right" to the freedom God had "Bestowed equally on all menkind."[254]

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[254] *A Documentary History of the Negro People*, 6-10; the biblical basis of the third petition's rebuke was Galatians 6:2, "Bear one another's burdens, and thus fulfill the law of Christ." George H. Moore refers to a second petition by Massachusetts slaves, including Prince Hall, in March of 1777; see Moore, *Notes on the History of Slavery in Massachusetts* (New York: D. Appleton & Co., 1865), 180-181. On public opinion as a factor in abolition in Massachusetts, see T.H. Breen, "Making History: The Force of Public Opinion and the Last Years of Slavery in

Toward the close of the Revolutionary War, after hundreds of black men had fought against the British to earn freedom, black petitioners still exhibited little indication of identifying themselves with the new nation. In 1780, seven Massachusetts black men submitted a request to be relieved from tax assessments, arguing that decades of "Long Bondag and hard slavery" had left them in an abject state of having no inheritances or foundation upon which to build an estate. Only a few recently freed blacks had managed to gain even a "small Pittance of Estate... through much hard Labour & Industry," and their situation remained so precarious that taxes threatened even this shadow of security. Reminding the legislators of their own revolutionary rhetoric, the petitioners pointed out that no blacks, even those with small estates, shared the "Privilage of freemen of the State having no vote or Influence in the election of those that Tax us," and this despite the record of many black men who "cheerfully Entered the field of Battle in the defence of the Common Cause...against a similar Exertion of Power (in Regard to Taxation)." But the overriding theme of this petition is not a call to an active part in the polity, and there is no claim to the right to vote based on any notion of citizenship or identification with the state or country. The thrust of the petition was simply to be excused from taxation, and the argument was predicated upon the notion that the legislators and white society in general owed something to those of "African extract." In contrast to later arguments made by African Americans, the petitioners did not argue for suffrage because free people of color were citizens and had a certain body of rights; in fact, they did not argue for suffrage at all. The debt arose out of two

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Revolutionary Massachusetts" in *Through a Glass Darkly: Reflections on Personal Identity in Early America*, ed. Ronald Hoffman, Mechal Sobel, and Fredrika J. Teute (Chapel Hill: University of North Carolina Press, 1997), 67-95.

causes: first, because whites has historically denied slaves economic opportunity and therefore caused the present debilitating state of many freed people; and second, because many slaves and free blacks had aided whites in *their* cause against unfair taxation.[255]

There continued to be an absence of identification with the new country in most of the writings and speeches by free people of color for the next two decades. In June of 1789, the members of Boston's African Lodge of Masons listened to the black minister John Marrant deliver a sermon on the biblical roots of masonry. Marrant, born in New York in 1755, was converted after hearing George Whitefield and worked as an itinerant evangelist until an early death at age thirty-five. His experiences were truly transatlantic: born in New York, he spent his youth in Georgia and Charlestown before being captured by and living for several months with Cherokees, and then pressed into service by the British Navy for seven years. After a salvation experience, he began preaching in England before being called to preach in the Americas. Marrant eventually went to Nova Scotia and New England, preaching to whites, blacks, and Indians.[256]

His message to the Masonic Lodge set out to prove "the anciency of Masonry," and fixed his black listeners within a biblical and Masonic lineage that stretched back to creation. He more than tweaked the Old Testament in order to read it as a record of the Mason's divine lineage and ordination.

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[255] *A Documentary History of the Negro People*, 14-16.

[256] Sidney Kaplan and Emma Nogrady Kaplan, *The Black Presence in the Era of the American Revolution* (Amherst: University of Massachusetts Press, 1989), 111-116; John Marrant, *A Narrative of the Lord's Wonderful Dealings With John Marrant, A Black*, reprinted in *Early Negro Writing, 1760-1837*, ed. Dorothy Porter (Boston: Beacon Press, 1971), 427-447; John Marrant, "You Stand on the Level with the Greatest Kings on Earth," in *Lift Every Voice: African American Oratory, 1787-1900*, ed. Philip S. Foner and Robert James Branham (Tuscaloosa: University of Alabama Press, 1998), 27-38.

When "great Architect" gave Noah a plan for the ark, Noah's sons become "like deputy and two grand wardens." In Marrant's sagacious rendering, Masonry becomes a historical redemptive force: not only was God's grace and salvation manifested through Noah, but God gifted the Masons with skill and knowledge in order to use them to settle and rebuild the world after the post-flood disaster at the tower of Babel. God also inspired Solomon with wisdom "as grand master and undertaker" in order for the temple to be built, which points to "one grand end and design of Masonry," rebuilding "the temple that Adam destroyed in Paradise."[257]

Placing his audience of black Masons and African Americans in general within this grand context that transcended time and space, Marrant attempted to create a transatlantic and trans-historical bond. He connected African Americans with Africans of the biblical (and therefore also Masonic) past and present, and, without mentioning whites or race, excoriated those who "despise those they would make, if they could, a species below them, and as not make of the same clay with themselves." Marrant reminded his audience that God had Africans to "stand on the level not only with them, but with the greatest kings on the earth." Marrant then placed his listeners within a network of obligation to all people, especially the weak and needy. They were "under a double obligation to the brethren of the craft of all nations on the face of the earth, for there is no party spirit in Masonry." A blend of Christianity, Masonry, and Africa provided the touchstones of identity and the bonds of community in Marrant's exhortations.[258]

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[257] Marrant, *Lift Every Voice*, 32-35.

[258] Ibid., 36.

The lodge's founder, Prince Hall, offered the same kind of formula in his addresses during annual St. John's festivals. He held up Tertullian, Cyprian, Augustine, and Fulgentius -- all leaders of the early church, some rendered as Africans -- as examples for emulation. In 1797 Hall reminded the lodge brethren "we shall call ourselves a charter'd lodge of just and lawful Masons... give the right hand of affection and fellowship to whom it justly belongs; let their colour and complexion be what it will, let their nation be what it may, for they are your brethren, and it is your indispensable duty so to do; let them as Masons deny this, and we & the world know what to think of them be they ever so grand."[259] A few years previous, Hall had taken a leading role in submitting a petition to the Massachusetts legislature requesting the state's financial aid for an emigration plan of black Bostonians to settle on the west coast of Africa. The petition, signed by seventy-three black men, described Africa as a land "for which the God of nature has formed us; and where we shall live among our equals, and... may have a prospect of usefulness to our brethren there."[260]

Themes of identification with Africa and the near-absence of identification with America persisted. In the 1808 pamphlet *The Sons of Africa*, an unnamed member of Boston's African Society repeatedly juxtaposed Africa in opposition to other nations, thereby creating and reinforcing a quasi-nationalism for African Americans. Asserting God's creation of all the nations from one blood, the writer noted that "All the Africans, at the present day, seem to be the butt of the nations over which

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[259] Prince Hall, "Pray God Give Us the Strength to Bear Up Under All Our Troubles" in *Lift Every Voice*, 52.

[260] Kaplan and Kaplan, *The Black Presence in the Era of the American Revolution*, 207-208. The 1787 petition is reprinted here.

men choose to tyrannise, enslave, and oppress." He later prodded his readers to come up with any legitimate rationale for slavery by asking if "Africans ought to be subject to the British or Americans, because they are of a dark complexion?" If Turkey, Spain, or Portugal enslaved Americans, America would rightfully consider those nations as "divested of all humanity," and therefore "what must be said of America... which treats the African in ways similar?" Furthermore, in all references to anything American, the writer uses not the first but the third person possessive pronoun: 'their' and not 'our.'[261]

The writer of *The Sons of Africa* participated in a process described by historians as the creation of a creolized 'Africa' in the minds of African Americans that absorbed original ethnic and cultural distinctives. David Waldstreicher notes that during the late eighteenth and early nineteenth centuries, the "redefinition of Africa as one nation can be seen in virtually all contemporary black writing."[262] This redefinition would have been more pronounced in the North, where public orations and print culture provided forums for black northerners to articulate and disseminate views on slavery, freedom, and the inequities of northern society. When they did so, black speakers and writers almost invariably invoked a representation of Africa in which regions encompassed the entire continent. The freedom petitioners

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[261] *The Sons of Africans: An Essay on Freedom. With Observations on the Origin of Slavery. By a Member of the African Society in Boston* (Boston: 1808), 20-21, 10. Located at the Boston Athenæum; also reprinted in *Early Negro Writing*, 13-27.

[262] See Waldstreicher, *In the Midst of Perpetual Fetes*, 320-322; W. Jeffrey Bolster, *Black Jacks: African American Seamen in the Age of Sail* (Cambridge: Harvard University Press, 1997), 38-39; Sterling Stuckey, *Slave Culture: Nationalist Theory and the Foundations of Black America* (New York: Oxford University Press, 1987). For an argument that does not refute but does complicate Stuckey's view, see Michael A. Gomez, *Exchanging Our Country Marks: The Transformation of African Identities in the Colonial and Antebellum South* (Chapel Hill: University of North Carolina Press, 1998).

represented Africa through remembrance of the central or western African homeland as "a Populous Pleasant and plentiful country"; John Marrant and Prince Hall employed the names of early church fathers, some of whom were supposedly from northern Africa, in representing African heritage; the *Sons of Africa* author and others rooted the image of Africa as a nation from days following the biblical flood when God sent Noah's sons out to populate the earth.

Other black writers and orators in the North sounded similar themes and used similar terms in identifying black men and women in America as part of a generalized African nation. Jupiter Hammon, the New York slave whose 1786 sermon mixing rebuke with encouragement must have blistered the ears of some of his black audience, sanctioned his message by identifying himself as a man of "your own nation and colour." Hammon did not mean the United States. The next year, one of the first formal black societies left out any connection to the United States and labeled themselves "the Free Africans and their descendants of the city of Philadelphia and the State of Pennsylvania or elsewhere." In 1794, writing from Philadelphia, Richard Allen and Absalom Jones typified a strategy of using Pharaoh's Egypt as a type for the United States: Egypt had been "destroyed by the protector and avenger of slaves," and so, too, could America be destroyed. And, as the white and black readers of this pamphlet knew, out of the destruction of Egypt a new nation was formed. Though Allen and Jones and other black writers usually did not go so far as explicitly stating that God would form a new African nation out of a destroyed America, there remained an implication of impending judgment for an unrepentant America and redemption for the oppressed African. Someday, they wrote, "princes shall come forth from Egypt." In a 1799 Absalom Jones led 73 black Philadelphians in a petition to

the President and Congress protesting slavery and the slave trade, and linked themselves to those of "like colour and national descent." Again, the 'nation' here was Africa.[263]

Concurrently, the public discourse of African Americans betrayed little identification with the American nation during the first two decades of the new republic. Because Africa was a somewhat mythologized homeland and even those who did desire to return to Africa found it difficult to do so, the cry of "No country!" continued to ring true for most free people of color. There were, however, some hints of articulating connection to an American polity. James Oliver Horton has noted that most free people of color "identified with the words and the spirit of the Declaration of Independence and the Revolution." But this did not equate to defining themselves as Americans or as a permanent part of the America polity. The laws of the African Society did identify its members in 1796 as "We, the African Members...true and faithful citizens of the Commonwealth in which we live," and in a qualified but complimentary attitude towards that commonwealth in *The Sons of Africa*, the author noted that "Massachusetts is greatly to be valued for the peculiar advantage which we enjoy, as it respects our freedom." The town of Salem in particular received praise "for their particular benevolence to the Africans." But for the most part the author credited any benefits of living in Massachusetts to God, not to the benevolence of whites, and even here he continued to juxtapose himself and

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[263] Jupiter Hammon, "An Address to the Negroes in the State of New York," reprinted in *Afro-American Religious History: A Documentary Witness*, ed. Milton C. Sernett (Durham: Duke University Press, 1985), 34; Aptheker, *A Documentary History of the Negro People*, 18; Richard Allen and Absalom Jones, *A Narrative of the Proceedings of the Black People, during the Late Awful Calamity in Philadelphia, in the Year 1793: and a Refutation of some Censures Thrown upon Them in some late Publications* (Philadelphia, 1794), 24, 28; 1799 petition reprinted in *Early Negro Writing*, 330.

other free people of color against other Americans by calling blacks "Africans, who inhabit Massachusetts."[264]

Even though the rhetoric of black leaders in the late eighteenth century, and the first years of the nineteenth century, did occasionally define Africans as citizens and members of Americans society, the contrast with later years remains striking: in 1829 even the militant David Walker called America his "native land" and emphatically stated "This country is as much ours as it is the whites." In 1832 Maria W. Stewart, labeled by one biographer as the first American woman to deliver political lectures before mixed-gender audiences, spoke before her Boston audience concerning the "American free people of color," while calling herself "a true born American." Later that same year, Peter Osborne painted a picture for his New Haven church of African Americans holding "the Declaration of Independence in one hand and the Holy Bible in the other," fighting for "our native country," thereby fulfilling the mantle laid upon them by their forefathers who had "fought, bled and died to achieve the independence of the United States."[265]

Surveying just the first year of *The Liberator* reveals pointed sentiments by African Americans claiming an American identity. A Philadelphia man who wrote to *The Liberator* asserted his identity as an American by pointing to his ancestors who had lived in Pennsylvania since

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[264] James Oliver Horton, *Free People of Color: Inside the African American Community* (Washington: Smithsonian Institution Press, 1993), 150; *The Sons of Africa*, 14, 17; *Laws of the African Society, instituted at Boston, 1796*. Located at the Boston Athenæum; also reprinted in *Early Negro Writing*.

[265] David Walker, *David Walker's Appeal, in Four Articles; Together with a Preamble, to the Coloured Citizens of the World, but in particular, and very expressly, to those of the United States of America* (Boston:1829), 55. I am using the 1995 edition of the Hill and Wang 1965 reprint, with an introduction by Sean Wilentz; *Maria W. Stewart: America's First Black Woman Political Writer*, Marilyn Richardson, ed., (Bloomington: Indiana University Press, 1987), 46. This volume reprints several of Stewart's speeches and essays; Peter Osborne, "It Is Time for Us to be Up and Doing," *Lift Every Voice*, 124-125.

William Penn came to the colonies, and that during his time spent fighting in the American Revolution he had endured "the times that tried men's souls." "Am I now to be told," he argued, "that Africa is my country, by some of those whose birth-place is unknown.?" Another "Colored Philadelphian" wrote "we are told Africa is our native country; consequently the climate will be more congenial to our health. We readily deny the assertion. How can a man be born in two countries at the same time? Is not the position superficial to suppose that American born citizens are Africans?" Brooklyn African Americans referred to the "United States of America, our native soil" and called themselves "*countrymen* and *fellow-citizens*" who demanded "an equal share of protection from our federal government."[266]

Another columnist in *The Liberator*, who did not identify him or herself as white or black, suggested in July of 1831 that the term 'negro' was considered insulting and offensive by free people of color, and that 'colored' "recalls to mind the offensive distinction of color" due to prejudice in the United States. Nor was 'African' suitable, for it was "no more correct than that of Englishman would be to a native born citizen of the United States." This writer offered a "change of appellation," with the term Afric-American being most appropriate, since it "asserts...that the colored citizen is as truly a citizen of the United States of America as the white." William Lloyd Garrison, the paper's publisher, asked his 'colored' readers for a response, and the only direct response, from a letter writer who did not identify themselves by color, rejected the 'change of appellation.' More telling is the indirect response of African Americans: in the next issue, Robert Wood and John T. Hilton, two prominent and activist members of Boston's black community,

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[266] *The Liberator*, January 22, March 12, July 2, 1831.

published a brief notice for a meeting of free people of color about establishing a black vocational college, and used the term 'Afric-American.' Another notice of a meeting in Hartford used the same term, and in the fall a group of female black Bostonians organized a literary association under the name "The Afric-American Female Intelligence Society Of Boston." In December, Peter Osborne exhorted his New Haven church to "take courage, ye Afric-Americans!"[267]

Though the individual and corporate identification with the United States became an integral part of northern African American identity, black Bostonians and other free people of color in the north by no means repudiated their African identity. The transatlantic perception combining African heritage and American themes came through clearly in a testimonial dinner in 1828, when David Walker and several other members of black Boston's leadership cadre welcomed the West African Prince Abduhl Rahaman, an escaped slave who had come to Boston in an effort to raise support for gaining his family's freedom from southern slavery. The language of some of the toasts were infused with American notions of "Independence and Liberty" and hopes that "the Spirit of Liberty which pervades our Northern Hemisphere" would spread south and worldwide. Cato Freeman praised Haiti for being "founded on the basis of true republican principles," and Coffin Pitts anticipated the day when "christianity, industry, prudence, and economy" would "characterize every descendant of Africa." James G. Barbadoes expressed a similar desire that the "sons and daughters of Africa soon become a civilized and christian-like people." Within these

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[267] *The Liberator*, July 16, July 23, August 13, 1831. The lone writer who rejected the suggested term appeared in the September 24, 1831 issue. Marilyn Richardson notes the 1831 founding of Boston's female literary association in *Maria W. Stewart*, 127; Osborne in *Lift Every Voice*, 125.

testimonials, given for an African prince they called brother, Boston's black leaders affirmed both their African heritage by labeling themselves 'sons and daughters' of Africa, and their American character by defining their hopes for the future with ideological terms that had become central to American identity -- republicanism, 'Independence,' 'Equality,' and 'Liberty.'[268]

Another less obvious example of the evolution from a virtual absence of affiliation to a strong identification with America was the formal expression of various societies' charters. In Boston, the African Society specified the laws of the society 1796 with the labels "1st," "2cd," and so on. But twenty-two years later, the African Humane Society, formed in 1818 with Scipio Dalton -- who had been the vice-president of the African Society -- as a founding member, wrote their by-laws and regulations in a manner distinctly different from the 1796 Society. The constitutions that black organizations wrote began to take on a decidedly constitutional character. The Humane Society gave each member a small book containing its Act of Incorporation and Constitution, which began with a paragraph stating "the constitution of the United States declares, 'ALL MEN ARE BORN FREE AND EQUAL;' and our laws protect all classes of men in all their rights." The Society's preamble also borrowed from the Constitutions's preamble in describing its purpose as "promoting the general welfare of all the people of colour." A list of twenty-

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[268] *Freedom's Journal*, October 24, 1828; *The Black Abolitionist Papers*, ed. C. Peter Ripley (Chapel Hill: University of North Carolina Press, 1991), vol. 3, 78. According to the editorial note here, the Prince, whose full name was Abd al-Rahman Ibrahima, had originally embarked on this tour to promote the American Colonization Society in return for their help in raising funds to free the rest of family. *Freedom's Journal* and other African Americans, however, typically portrayed the Prince's cause as the emancipation of his family (which was undoubtedly the Prince's sole motivation), and neglected to mention the colonization aspect to his northern tour.

four 'Articles' followed the preamble. In 1831, the Afric-American Female Intelligence Society of Boston spelled out their by-laws in a similar manner.[269]

The same pattern played out in other northern cities. The 1787 society that preceded the forming of the Bethel church in Philadelphia laid out their financial rules in a simple unlabeled paragraph. In 1797 St. Thomas, an African Episcopal church in Philadelphia, divided their constitution into two sections, "Regulations" and "Rules." And in 1808 the Rhode Island African Benevolent Society of Newport, who included themselves as part of "the African Nations," separated their constitution into several sections, labeled as the rules "Of Members," "Of the School," and so forth.[270] But the 1810 constitution for New York's African Marine Fund had a preamble followed by laws labeled "Article I," and likewise to the final "Article VIII." The Augustine Education Society of Pennsylvania listed its twelve Articles after a preamble in 1818.[271]

Other organizations throughout the north in the 1820s and 1830s followed suit. Philadelphia's Brotherly Union Society, formed in 1823, identified themselves in a similar fashion to the 1787 society that Richard Allen and Absalom Jones founded. But while the 1787 group had identified their members as "the Free Africans and their descendants of the city of Philadelphia and the State of Pennsylvania or elsewhere," forty years later the Brotherly Union Society identified themselves as "coloured men, of the

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[269] *The Laws of the African Society; The By-Laws, rules and regulations, of the African Humane Society,* (Boston: 1820). The by-laws of the African Humane Society are in a small booklet, which had belonged to Cato Freeman, and is contained in the Robert Morris Box at the Boston Athenæum; George A. Levesque, *Black Boston: African American Life and Culture in Urban America, 1750-1860* (New York: Garland Publishing, 1994), 324-325.

[270] *A Documentary History of the Negro People,* 17-19; *Early Negro Writing,* 28-32 and 84-86.

[271] *Early Negro Writing,* 42, 92-93.

county of Philadelphia, citizens of the Commonwealth of Pennsylvania and of the United States of America."[272]

Black Bostonians, then, were a part of this trend of northern black identity formation. Leaders of the community actively solicited copies of speeches delivered in other northern cities, and several, including David Walker, were the Boston agents for *Freedom's Journal*.[273] James Oliver Horton has described northern black northerners' penchant for retaining institutional names that spoke clearly of their African heritage while incorporating American political structures and language, thus blending "the two aspects of their heritage to their advantage."[274] But Horton places the 1796 African Society in Boston and the later groups in New York and Philadelphia within the same category of blended heritage, while the argument here parses the language these groups choose to employ in writing their charters more closely. While free people of color in the late eighteenth century and the first years of the nineteenth did, as Horton argues, begin to incorporate aspects of American principles into their organizational activities and identity, the change over time was and is significant. Claims of an American heritage or identity by free people of color in the late eighteenth and the first years of the nineteenth century were muted or non-existent, but

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[272] Ibid., 51. Constitutions with similar wording, also in this volume: the New York African Clarkson Association, 1825; the American Society of Free Persons of Colour, 1831; the Pittsburgh African Education Society,1832; and the Phoenix Society of New York, 1833. Also see the constitution of the Colored Anti-Slavery Society of Newark, 1834, in *The Black Abolitionist Papers*, 132-134.

[273] For instance, a public meeting of black Bostonians in the African School published a few resolves, one of which recommended that free people of color get copies of speeches Garrison delivered to the black communities in Philadelphia and New York. See *The Liberator*, July 16, 1831.

[274] Horton, *Free People of Color*, 154.

as the nineteenth century progressed, northern African Americans consciously and stridently laid claim to the American aspects of their heritage.

Signal events helped catalyze this evolution of identification, especially the abolition of the slave trade in 1808 and the rise of the colonization movement in the next decade. When Congress made the importation of slaves illegal as of January 1, 1808, African Americans finally had some cause to celebrate the nation for something specifically related to an essential part of their identity and heritage -- what seemed to be the ostensible end of the rape of their homeland. While the end of the slave trade furthered a connection to the United States, it did not cause an articulation of American identity to spring forth *ex nihilo;* but the abolition did provide opportunity for its expression. Public gatherings keynoted by orators extolling the virtues and sins of the United States marked what was essentially African Americans' first national day of celebration. The orations "fought American racial injustice while inventing and establishing black nationality." On a first anniversary celebration in New York, William Hamilton's praise of the act "which for its justice and humanity, outstrips any that have ever been passed by that honorable body" of the United States Congress typified expressions of gratitude that many African Americans could now direct towards the national government.[275]

Other speeches made a more explicit identification with America: at the opening of his speech in 1808, Peter Williams defined himself and his audience as "Africans, and the descendants of Africans," and near the end told his audience that "As an American, I glory in informing you that Columbia boasts the first men who distinguished themselves eminently in

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[275] *Early Negro Writing,* 35; Waldstreicher, *In the Midst of Perpetual Fetes,* 344.

the vindication of our rights." A year later, Joseph Sidney boasted that "in these United States, reason, truth, humanity, and freedom have finally obtained a glorious triumph over sophistry, falsehood, cruelty, and tyranny." Sidney, who had no trouble using the first possessive pronoun 'our' when referring to America, went further by not only identifying with America, but by also placing himself and African Americans in general as guardians of America's future through support of the Federalists and opposing "our enemies," the Jeffersonians, and "the great idol of democracy," Thomas Jefferson. On the sixth anniversary of the abolition of the slave trade, Russell Parrott pointed to the War of 1812 as proof that "we are faithful to our country...where her Hull, her Decatur, and her Bainbridge, fought and conquered, the black bore his part, stimulated by pure love of country." Parrott likely had in mind black sailors who fought in the war, many of whom made clear declarations of what W. Jeffery Bolster called "a radical African American patriotism" when impressed by the Royal Navy. Several months later, black New Yorkers would express their allegiance and stake their claim as a part of the nation by turning out unbidden to build fortifications in case of a British attack.[276]

Whereas the abolition of the slave trade provided a positive release for aligning with the American polity, the rise of the colonization movement proved to be a negative force triggering a vigorous assertion of American identity among African Americans throughout the antebellum era.[277] While

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[276] *Early Negro Writing*, 350, 357, 361, 390; Bolster, *Black Jacks*, 117; Shane White, *Somewhat More Independent: The End of Slavery in New York City, 1770-1810* (Athens: University of Georgia Press, 1991), 150.

[277] On African Americans involved in furthering emigration to Africa, see Lamont D. Thomas, *Rise to Be a People: A Biography of Paul Cuffe* (Urbana: University of Illinois Press, 1986); and Floyd J. Miller, *The Search for a Black Nationality: Black Emigration and Colonization 1787-1863* (Urbana: University of Illinois Press, 1975).

African Americans continued without reservation to avow an African heritage, the characterization of Africa changed. The orations on the abolition of the slave trade had typically recalled an almost idyllic Africa, but in one of the first responses against colonization, James Forten and Russell Parrott referred in 1817 to "the burning plains of Guinea." Subsequent emigrants confirmed those opinions; in 1833 Joseph Dailey wrote back to Philadelphia, describing high death rates among emigrants to Liberia, crowded hospitals, poor agriculture, and corrupt politics. Meanwhile, Dailey referred to America as his "native country." This varies from Floyd J. Miller's argument in *The Search for Black Nationality,* in which he asserts that colonization efforts provoked some free blacks to seek a new nationality in Africa. That may indeed characterize the minority that supported emigration. But the vast majority of free blacks in Massachusetts and throughout the North did not have to search for their nationality. Colonization aroused a fierce black patriotism.[278]

Much of the impetus for sending African Americans to colonies on the west coast of Africa did come from black men such as Paul Cuffe, but the twin forces of general disapproval from ordinary black folks and the seizure of the movement's leadership by prominent whites prompted most black leaders to repudiate all colonization schemes. A significant part of the reason for rejecting emigration was a refusal to abandon enslaved black men and women and leave their hopes for emancipation solely to the few principled whites who might carry on the fight for abolition. James Forten told Paul Cuffe in 1817 that the three thousand black Philadelphians who rejected emigration suspected "the slaveholders wants to get rid of them so as to make

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[278] *Early Negro Writing,* 267; *The Black Abolitionist Papers,* 74-77.

their property more secure." But another powerful motivation crystallized in the unequivocal claim that African Americans already had a country, a country to which they belonged, and, perhaps more significantly, a country that belonged to them. When David Walker and the other black writers in the Liberator called America their own country, they did so in the context of rejecting colonization.[279]

David Walker provided one of the more complex articulations of the American aspects of free black identity. When rebuking whites for prejudice, hypocrisy, willful ignorance, and all their other sins against enslaved and free blacks, Walker persistently refers to "the Americans." Using the term in a denigrating and bitterly sarcastic manner generated a distance between African Americans and 'the Americans' who perpetuated oppression. He does likewise with the term "the Christians." But just as Walker saw himself as a true Christian, so he saw himself and those who supported the cause of oppressed black men and women, whether they be black or white, as true Americans. Walker drew distinctions between blacks and their "white friends" who sought to refute claims of black inferiority that men like Thomas Jefferson had made; those charges needed to also be "refuted by blacks *themselves*." Furthermore, when black men and women gained enough education and opportunity to make full use of all their talents, Walker speculated that a freed people might want "perhaps more, to govern ourselves." This articulation of a potential black nationalism did not, however, exclude or even hint at a different nationality than an American one: for all his warnings of judgment and castigating the nation as a whole, Walker did not disassociate himself from America but claimed it as his

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[279] Wilson Jeremiah Moses, *Classical Black Nationalism: From the American Revolution to Marcus Garvey* (New York: New York University Press, 1996), 51.

nation. Walker included a letter Richard Allen wrote to *Freedom's Journal* to make his point: "This land which we have watered with our *tears* and our *blood,* is now our *mother country.*"[280]

African Americans' assertion of America as a homeland and their claim to a stake in America rested on two intertwined arguments. First, the labor of generations of slaves entitled them to far more than they presently had. Second, they had a right to stay in their homeland and realize a better future-- a right conferred by God, by nature, and by legal rights based upon the Constitution. Relying on the law and the Constitution may have signaled an acceptance of how legitimate change would be accomplished while weakening more radical challenges. Radical challenges, however, such as a separatist movement to establish a black nation within the nation, were not realistic -- the threat to white hegemony would have been to great to be ignored. Moreover, if their words are to be believed, most African Americans saw themselves as part of the country and not as a separate nation that happened to exist within a nation. But African Americans' vision and interpretation of the law in general and the Constitution in particular did provide black leaders an effective tool for challenging white hegemony by calling for white Americans to live up to the promises of the revolutionary heritage they so loudly proclaimed.

The appropriation of the the form and language of the Declaration of Independence and of the Constitution by black leadership in the nineteenth century was a double-edged rhetorical thrust at racial oppression in

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[280] David Walker's Appeal, 58. For a thorough treatment of the David Walker's Appeal, see Peter P. Hinks, *To Awaken My Afflicted Brethren: David Walker and the Problem of Antebellum Slave Resistance* (University Park, Pennsylvania: University of Pennsylvania Press, 1997).

antebellum America. It provided a cutting reminder of promises denied, but it was also a powerful expression of African Americans' belief -- or at least their hope -- in the power and promise of that document and the ideology they believed it represented.

Black leaders' constitutional argument for freedom used the Constitution against itself. Free people of color used sections of the Constitution to negate any right to own slaves that other sections permitted and constructed arguments based on the principles of individual liberty and equality that they read in the Constitution. One tactic privileged the Preamble over the body of the Constitution. Vincent Harding describes the concern of the Afro-American freedom movement for over two centuries as trying "to liberate the essential spirit of the document, especially as that spirit is represented in the Preamble." In 1851, William Howard Day, arguing for an interpretation of the Constitution as an anti-slavery document, quoted from the Preamble to point out that "if it says it was framed to 'establish justice,' it, of course, is opposed to injustice." He supported his position further by using a portion of the Fifth Amendment: "if it says plainly 'no person shall be deprived of life, *liberty*, or property, without due process of law,' -- I suppose it means it, and I shall avail myself of the benefit of it." African Americans, taking notice of the contradiction between the Preamble and the some of the more conservative parts of the main body of the document, used that contradiction as "a wedge by which they might engage the struggle for the transformation of the Constitution, the nation -- and themselves."[281]

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[281] Vincent Harding, "Wrestling Toward the Dawn: The Afro-American Freedom Movement and the Changing Constitution," *Journal of American History*, 74 (December, 1987), 720-721; *Proceedings of the Black State Conventions, 1840-1865*, ed. Philip S. Foner and George E. Walker (Philadelphia: Temple University Press, 1979), vol 1, 262.

Black writers and orators interpreted and applied the Declaration of Independence and the Constitution, just as John and Sophia Robinson interpreted and applied the law in their attempt to ensure Elizabeth's freedom. When they used the Constitution to push for equality and opportunity, they commonly referred to the Constitution in general and not specific terms. At times the two documents became fused in black rhetoric, as in the case of a black Philadelphian who argued that racist practices were "in direct opposition to the Constitution; which positively declares, that all men are born equal, and endowed with certain inalienable rights -- among which are life, liberty, and the pursuit of happiness." Their arguments, at times constructed not from specific articles or amendments but from principles they believed the document intended to profess, mirrored the broader process of Americans who "commonly spoke in constitutional terms when debating political and social issues."[282] For free black leaders this habit began early on; in a 1797 petition to Congress, four southern black men who had fled to the north referred to "the unconstitutional bondage" they had left behind, and called the Fugitive Slave Act of 1793 a "direct violation of the declared fundamental principles of the Constitution" without delineating exactly what those principles were or what they were based upon. By the middle of the nineteenth century, African Americans had grown quite astute in dissecting and applying specific parts of the Constitution to negate other sections that could be interpreted as proslavery. Nearly sixty years after the 1797 petition, John Mercer Langston invoked the "true spirit of the American Declaration of Independence [and] the Constitution" in his condemnation of the 1850

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[282] *The Liberator*, February 12, 1831; Donald G. Nieman, *Promises to Keep: African Americans and the Constitutional Order, 1776 to the Present*, (New York: Oxford University Press, 1991), 31.

Fugitive Slave Law before the Convention of Colored Citizens of Ohio. But Langston went further and spelled out the specific legal grounds for the unconstitutionality of the Fugitive Slave Law, in particular "the constitutional guarantee of the writ of *Habeas Corpus*."[283]

Interpreting the Constitution as an anti-slavery document put many black leaders at ideological odds with white and black abolitionists like Garrison and Martin Delany, who saw the Constitution as an endorsement of slavery and was thus a "covenant from hell." In 1844, Massachusetts black and white attendees of the New England Anti-Slavery Convention heard Charles Lenox Remond criticize the Constitution as an instrument of oppression upon "the few whom it entirely overlooks, or sees but to trample upon." Remond and other Garrisonian abolitionists who advocated disunion viewed the Constitution as a tool for protecting slavery and as the glue binding the free states to the slave states. Their views were shared by other African Americans in the North. At an Ohio convention, H. Ford Douglass offered a fervent denunciation of the pro-Constitutional positions held by William Howard Day and John Mercer Langston, declaring that "the gentleman may wrap the stars and stripes of his country around him forty times, if possible, and with the Declaration of Independence in one hand, and the Constitution of our common country in the other, may seat himself under the shadow of the frowning monument of Bunker Hill." Langston replied that he hoped black men would do anything "under the Constitution, that will aid in effecting our liberties." But Douglass' repudiation demonstrates how deeply other African Americans had drunk of the Constitutional well; he castigated the thorough identification of other black

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[283] *Proceedings of the Black State Conventions*, vol. 1, 260; *A Documentary History of the Negro Peoples*, 43.

leaders with American ideals and heritage. That identification fostered a support for the Constitution and lead the convention to side with Day and Langston. They voted down Douglass' motion to reject the Constitution twenty-eight to two.[284]

The anti-constitutional position of Remond and successors of his stance like Henry McNeal Turner has been characterized by Mary Frances Berry as a negative view of the Constitution. Berry labels this group as the "blacks-do-not-need-whites-to-succeed" school. On the other hand, antebellum black abolitionists who supported the Constitution emphasized "Americans' own stated ideals" and often "attempted to identify with those ideals and to insist that the nation should live up to them." Berry notes that the civil rights movement, beginning in the nineteenth century and continuing into the twentieth, "was a distinctly American movement, making appeals to traditional American culture and values." And though, as Peter Hinks points out, Americans, black or white, did not have a monopoly on many of these values, the context within which black leaders worked and the culture and value system they drew from was nonetheless an American one. When Charles Lenox Remond, speaking before the Massachusetts legislature in 1842, called Boston the "Athens of America," he invoked a republican vision of independence and equality that Americans, black and white, intuitively understood.[285]

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[284] Charles Lenox Remond, *Black Abolitionist Papers*, vol. 3, 442; *Proceedings of the Black State Conventions*, vol. 1, 262-263; Donald G. Nieman, "The Language of Liberation: African Americans and Equalitarian Constitutionalism, 1830-1950" in *The Constitution, Law, and American Life: Critical Aspects of the Nineteenth-Century Experience*, ed. Donald G. Nieman, (Athens: The University of Georgia Press, 1992), 67-90, 68.

[285] Mary Frances Berry, "Vindicating Martin Luther King, Jr.: The Road to a Color-Blind Society" *Journal of Negro History* 81 (1996), 141; Hinks, *To Awaken My Afflicted Brethren*, 110; see also William M. Wiecek, *The Sources of Anti-Slavery Constitutionalism in America, 1760-1848* (Ithaca: Cornell University Press, 1977); Charles Lenox Remond, *Black Abolitionist Papers*, vol. 3, 368.

African Americans saw themselves as part of that republican vision of America. They called upon federal and state governments to uphold the spirit of the Constitution's preamble to "promote the general welfare, and secure the blessings of liberty to ourselves and our prosperity." According to their interpretation of the Constitution, the government ought to serve their interests since they were a part of the sovereign people. In this African Americans differed little from other Americans; Americans had undergone a significant change in their view of the law and government in the nineteenth century, when the traditional view of rights was largely displaced. The traditional view had "emphasized what government could *not* do," but within that older view, which had been essential when an absolute sovereign had the potential to take away established practices, "rights defined as restraint made less sense where the people themselves were sovereign.... if the people owned the government, it should serve their interests. So argued those energetic Yankees who called on law to help them modernize the economy, conquer the continent, and exploit its riches." While historian R. Kent Newmyer and the Yankees he describes were concerned with the expansive change in how the law could help free up capital, free people of color argued for a government and law that served their particular interests. In Boston, Hosea Easton drove this point home. African Americans, he said, "being constitutionally Americans," were depending on "American government, and American manners...a witholding of the enjoyment of any American principle from an American man... is in effect taking away his means of subsistence; and consequently, taking away his life." Black Bostonians, like other free people of color, sought freedom from racial oppression and equal civil rights, upon which the ability to take complete

advantage of the nation's burgeoning economic opportunities was predicated.[286]

Though Walker and other black leaders unflinchingly concentrated attention on the sins and inconsistencies of the United States, they shared the moral, economic, and political aspirations of most Americans. Many of those aspirations had never been anathema to an African worldview, thus facilitating African Americans' support. As early as the 1790s, Venture Smith placed frugality, financial stability, and material success as high priorities. The African-born Smith, who grew up in Connecticut, expressed a value system that many west African cultures as well as New England Yankees would have appreciated. Black entrepeneurs in Boston like David Walker and John Hilton, who joined in toasts for prudence and economy at the testimonial dinner for Prince Abduhl Rahaman, no doubt shared those sentiments.[287]

The point here is not to enter into the well-worn argument of assimilation versus resistance. Certain aspects of African and American value systems could and did co-exist; nevertheless, nineteenth-century African Americans expressed these ideals and aspirations in an American context and in American terms. Walker persisted in defining himself as

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[286] R. Kent Newmyer, "Harvard Law School, New England Culture, and the Antebellum Origins of American Jurisprudence," *Journal of American History* 74 (December 1987), 814-835, 821; also see James Willard Hurst, *The Law and Conditions of Freedom in the Nineteenth-Century United States* (Madison: The University of Wisconsin Press, 1956); and Morton J. Horwitz, *The Transformation of American Law 1780-1860* (Cambridge: Harvard University Press, 1977); Hosea Easton, *A Treatise on the Intellectual Character, and Civil and Political Condition of the Colored People of the United States* (Boston: 1837), 49. Reprinted in *Negro Protest Pamphlets: A Compendium* (New York: Arno Press and the New York Times, 1969).

[287] See Robert E. Desrochers, Jr., " 'Not Fade Away': The Narrative of Venture Smith, an African American in the Early Republic," *Journal of American History* 84 (June 1997), 40-66; and *A Narrative of the Life and Adventures of Venture A Native of Africa, But Resident above Sixty Years in the United States of America* (New London, 1798), reprinted in *Five Black Lives* (Middletown, CT: Wesleyan University Press, 1971).

African or of the "African race," and though opposed to emigration, held up Haiti for emulation. Like many other African Americans, Walker expressed corporate ties reaching beyond the shores of the United States. But these transatlantic connections did not subsume an American identity or Walker's commitment to a system of morals and values accepted by many white and black Americans. Walker "wanted only the opportunity for his people to participate fully without obstacle in the expanding free labor economy and the culture of Protestant moral improvement." Celebrating the end of slavery in New York on July 4th of 1827, the escaped slave and entrepreneur Austin Steward exhorted African Americans to inscribe "in letters of gold upon every door-post -- 'industry, prudence, economy.'" Samuel Cornish, co-founder of the nation's first black newspaper, articulated a Jeffersonian-like vision of getting black families to establish a literal stake in this country when he ran an ad for the sale of a 2000-acre parcel of land along the Delaware river in New York. Cornish's stated aim was to sell it at half its value (by his estimate), so as to avoid the appearance of attempting to make a "good bargain". For buyers, he was looking for some of his "brethren who are capitalists", who he hoped would in turn sell it for a small profit to black families who would build an African American farming community. Walker, Steward, Cornish, and others connected pursuit of financial stability to sound morals, education, hard work, and prudence -- qualities inseparable from the overall goal of full equality.[288] But black leaders knew virtue, frugality, and education would be insufficient to elevate ordinary free people

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[288] Hinks, *To Awaken My Afflicted Brethren*, 108-110; Austin Steward, "Termination of Slavery," in *Lift Every Voice*, 108; Cornish's ads in *Freedom's Journal*, July 13, 1827 and several other issues.

of color to full social, economic, and political equality without procuring all the rights that God, nature, and the Constitution imparted.

Most African Americans, far from proposing radical change or abandoning the country, were intimately tied to many of the goals articulated by American society. As Kimberle Crenshaw has pointed out for the twentieth-century civil rights movement, antebellum black activists called on social and political institutions to act in the way they were supposed to act according to the Constitution so that African Americans, like white Americans, could realize those goals. Black New Yorkers gathering in 1840 for a state convention aimed at gaining black suffrage, professed themselves "to be American and republican," and described the Declaration of Independence and the Constitution as embodying "the primary ideas of American republicanism." In their estimation, the framers of those documents had intended federal and state governments to live up to those ideals by granting and protecting the "republican birth-right" every individual, black or white.[289]

When African Americans spoke of a 'birth-right' they infused it with multiple meanings. Birth-right connoted a stake in America because their forefathers fought for freedom, and implied that an inheritance was due them because slaves had worked the land. But it also grounded a rights discourse by focusing on constitutionally defined citizenship by right of birth. During the plenary address at the 1840 New York convention, published in the *Colored American* and likely read by Boston's black leaders, Austin Stewart neatly summarized this by asserting "We do regard the right of our

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[289] Kimberle Williams Crenshaw, "Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law," *Harvard Law Review* 101 (May, 1988) 1331-1387, 1367; *Proceedings of the Black State Conventions*, v. 1, 21.

birthdom, our service in behalf of the country, contributing to its importance, an developing its resources" as sufficient reason to consider African Americans as worthy of suffrage. But Stewart predicated the right to vote on "still higher ground" -- the "certain peculiar rights" belonging to any being "found endowed with the light of reason." Human nature provided the foundation and legitimation for rights, and the Declaration of Independence and the Constitution represented the ultimate expression of "natural and indestructible principles of man," designed to secure "the purest liberty God ever conferred" upon a people.[290]

Making rights rhetoric the heart of the argument for full equality and opportunity was "a way of saying that a society... ought to live up to its deepest commitments." The complicating factor becomes the limits of using rights to achieve the desired goals. Crenshaw notes that "demands for change that do not reflect the institutional logic -- that is, demands that do not engage and subsequently reinforce the dominant ideology -- will probably be ineffective." Because African Americans shared many of the same goals and ideals of other Americans, most had little desire to effect radical change that threatened established institutions (other than slavery) or to challenge an ideology that placed the Constitution and the law as a primary agent of change.[291]

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[290] *Proceedings of the Black State Conventions*, v. 1, 21-22.

[291] Crenshaw, "Race, Reform, and Retrenchment," 1365-66; *Proceedings of the Black State Conventions*, vol. 1, 21-22. For arguments similar to Crenshaw's regarding the how the need to legitimate law and legal ideology works both to maintain hegemony while also exposing it to challenges, see Douglas Hay, "Property, Authority, and the Criminal Law" in *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (New York: Pantheon Books, 1975), 3-64; E.P. Thompson, *Whigs and Hunters: The Origin of the Black Act* (New York, Pantheon Books, 1975).

Kimberle Crenshaw's insights on the possibilities and limitations of twentieth-century civil rights protesters' use of rights rhetoric are directly relevant in discussing antebellum black activists. Like their twentieth-century successors, black leaders made claims framed in language of rights rhetoric that Americans of all ranks would recognize. Their claims "reflected American society's institutional logic: legal rights ideology." By talking about legal rights, African Americans in both centuries "exposed a series of contradictions," primarily the contradiction between Constitutional promises of citizenship and its attendant privileges, and the systematic denial of those privileges through the practice of racial subordination. But African Americans, beginning in the antebellum era, advanced arguments "as if American citizenship were real, and demanded to exercise the 'rights' that citizenship entailed." This represented an attempt "to restructure reality to reflect American mythology," a mythology that presumed rights undergirded all social and political equality, and would also open the doors to economic opportunity. Obtaining full exercise of rights would supposedly make reality fit the mythology.[292]

Crenshaw points out that it is the need of the dominant order "to maintain legitimacy that presents powerless groups with the opportunity to wrest concessions" from that order, but at the same time, "it is the very accomplishment of legitimacy that forecloses greater possibilities. In sum, the potential for change is both created and limited by legitimation." Though the kind of change Crenshaw speaks of is primarily legal and political in nature, her conclusions can be applied to the construction of identity. The 'institutional logic' of legal rights ideology shaped African American identity.

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[292] Crenshaw, "Race, Reform, and Retrenchment," 1367-1368.

By using the Declaration of Independence and the Constitution to legitimate their citizenship, African Americans made that legal rights ideology an integral part of their identity.[293]

Incorporating a legal rights ideology into a free black identity may have foreclosed more radical alternatives, such as a 'classical' black nationalism. Wilson Jeremiah Moses defines classical black nationalism as "the effort of African Americans to create a sovereign nation-state and formulate an ideological basis for a concept of a national culture." African Americans who supported establishing a black republic through colonization, whether in west Africa, Canada, or other parts of the Americas, were classical black nationalists. The movement to create a black republic revived shortly before the Civil War, but never received broad support in black communities. Undercutting classical black nationalism in the antebellum era was an African American identity that articulated a vigorous claim to American citizenship based on the birth-right and the Constitution. Part of living out that identity was fighting for full citizenship rights.[294]

Writing from Boston in 1855, William C. Nell called African Americans the "Patriots of the Second Revolution." His label neatly encapsulated African Americans' revolutionary heritage, as well as their continuing duty to pursue change. Though the committment to seeing the fulfillment of the promises of the Constitution weakened the potential of a classical black nationalism, fighting for individual and group rights did create potential for change. In the decades before the Civil War, African Americans and their white allies managed to strike down racist practices in

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[293] Ibid.

[294] Moses, *Classical Black Nationalism*, 2.

Massachusetts that segregated rail cars and schools. Fighting for rights also became part of what it meant to be African American.[295]

While free blacks' use of a legal rights ideology may have limited some potential for change, the historical context is crucial: few alternatives existed for African Americans. The law and rights rhetoric offered one of the few possibilities for change, as well as some ability to exercise control over their own lives in an era of steadily deteriorating conditions. For most free people of color, emigration or the establishment of a classical black nationalism was beyond their means, and, more importantly, beyond their desire. Though the choices free people of color had available to them were limited, the elements of choice and agency remain important. African Americans were not ignorant of other possibilities such as emigration. But they consciously conceived of themselves as Americans with a legitimate claim to citizenship, and they asserted that claim during a time when proslavery forces and white colonization advocates challenged their right to even be considered citizens. Protecting that basic right was crucial in the daily lives of many ordinary African Americans. Black Bostonians who exercised their rights to use the law and the courts in a variety of ways would have suffered had they, unlike their enslaved southern brethren, not experienced the guarantees of the fifth through the eighth amendments or been unable to execute writs of *habaes corpus*. A letter written by a black man to *The Liberator* pointed to the consequence of slaves being unprotected by the Constitution:

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[295] William C. Nell, *The Colored Patriots of the American Revolution, with Sketches of several Distinguished Colored Persons: to which is added a Brief Survey of the Condition and Prospects of Colored Americans* (Boston: 1855), 380. Reprinted by Arno Press and the New York Times, 1968; on the efforts to end segregation in Boston, see Levesque, *Black Boston*, 149-152 and 165-229; James Oliver Horton and Lois E. Horton, *Black Bostonians: Family Life and Community Struggle in the Antebellum North* (New York: Holmes and Meier, 1979), 67-76; *Jim Crow in Boston: The Origin of the Separate but Equal Doctrine*, ed. Leonard W. Levy and Douglas L. Jones (New York: Da Capo Press, 1974.)

"they are not permitted to testify against a white criminal, in courts of justice; consequently, their persons, property, and lives are at the mercy of every white ruffian, thief or murderer. The question, therefore, should be quickly settled, whether free colored persons, born or naturalized in this country, are not American citizens, and justly entitled to all the rights, privileges and immunities of citizens of the several states; and whether the Constitution of the United States makes or authorises any invidious distinction with regard to the color or condition of free inhabitants."

A few years ealier, a report in *Freedom's Journal* pointed out injustice in the West Indies when a slave managed to publicly identify his assailant shortly before he died from the injuries. The slave's testimony, however, had no legal standing and his murderer was allowed to go free. The living testimony of the denial of citizenship and legal recognition to millions of slaves remained continually before free people of color.[296]

African Americans had moved from bleakly acute cries of "No Country!" to compellingly resolute declarations of "Our Country!" Vincent Harding notes that one of the "essential questions" -- perhaps the first and foremost one for African Americans in the early republic -- raised by the black freedom movement was focused on the Preamble: "Who were 'we the People of the United States'?" Like Maria Stewart, who proclaimed herself a "true born American," most black women and men had no doubt in their own minds that they did indeed belong in that equation. The challenge was

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[296] *The Liberator*, January 15, 1831; *Freedom's Journal*, September 14, 1827. On the antebellum environment for African Americans, see Gary Nash, *Forging Freedom: The Formation of Philadelphia's Black Community, 1720-1840* (Cambridge: Harvard University Press, 1988); Leonard P. Curry, *Free Blacks in Urban America* (Chicago: University of Chicago Press, 1981); Shane White, " 'We Dwell in Safety and Pursue Our Honest Callings': Free Blacks in New York City, 1783-1810," *Journal of American History* 75 (September, 1988), 445.

making American social and legal institutions recognize what African Americans already knew.[297]

But because rights and fighting for rights became an integral part of African American identity, many black men and women could brook no lassitude on the part of other free blacks regarding any issue concerning rights. Those who appeared to shirk from the battle became the target of withering criticism, as they were perceived as betraying what it meant to be African American. During the 1840s and 1850s, black Bostonians became embroiled in an acrimonious dispute over whether to support the closure of Boston's black schools in favor of integration with the white schools. Differing interpretations developed over what it meant to be black and a citizen, and to some extent, the depth of feeling that surfaced in this debate resulted directly from the incorporation of legal rights ideology within free black identity.

[297] Harding, "Wrestling Toward the Dawn," 721.

Chapter Five

The Elusive Boundaries of Blackness: Identity Formation in Antebellum Boston

African Americans' vigorous defence of free people of color as American citizens in the first half of the nineteenth century left little room for calm disagreement within the black community when issues concerning the exercise of rights were at hand. The stakes were high. In the estimation of many black leaders, the present welfare and future prosperity of all blacks hinged on their ability to protect the rights they had and to gain the rights they did not have. Though there was broad agreement among black Bostonians that rights were crucial, there was not always consensus on the best strategies for accomplishing those goals. Dissent felt like betrayal.

During the 1840s the question of whether or not to push Boston's School Committee to allow African American students into the public schools and close the tax-supported black schools brought dissension to the forefront. Black leaders pushed hard for integration, because they believed their childrens' education would improve, and because it was their responsibility as African Americans to fight for equal rights. They ran headlong into a divisive dispute. The conflict exposed deep personal sentiments that reflected different perspectives among black Bostonians concerning the future of the black community, what citizenship in the republic meant, and how citizenship ought to be wielded in protecting and promoting black interests. The dispute, at times quite acrimonious, demonstrated the extent to which black identity was contested ground in the urban antebellum north. An image of black identity emerged with a relatively stable core but uncertain boundaries. Stability existed in a consensus that African

Americans were citizens and had little desire to be defined as anything other than American. But the rancorous discussion between the two groups blurred the boundaries of identity. The integrationists attempted to include commitment to making equal rights a reality as quickly as possible as a part of what it meant to be black and American. The separatist-minded blacks argued that there were limits to what could be realistically expected, and that part of being a citizen was the right to withdraw from interacting with whites on certain issues and pursue their own course. For them, being African American was simply that: an African heritage, and an American citizenship. What each black woman or man made of their citizenship did not detract from what it meant to be black and American.

Using a tactic at times still employed in public disputes today, the integrationists, who counted most of Boston's prominent African Americans among their ranks, attempted to define their black opponents as standing outside the black community. Meanwhile, their opponents, who composed a substantial minority of the black community that wanted to maintain the city's black schools, exercised a broader conception of black identity. They appealed to common experience and to the prejudice every African American faced. Led by Thomas Paul Smith, John H. Roberts, and Alexander Taylor, the minority faction prompted the more prominent integrationists to amplify the importance of the school issue by placing it in the context of a national struggle for rights and the future of black Americans. In the minds of the integrationists, racial barriers had to fall before African Americans could truly be full citizens. Reaching that goal demanded that black citizens challenge those barriers at every turn; to do less constituted a betrayal of present and future generations. The minority 'separatist' faction, however, conceived of citizenship as the right to be left alone by whites and thus avoid an implacable racism when possible.

During the night of September 17th, 1849, Boston's sixth ward witnessed a palpable expression of how deep feelings ran. Earlier in the day the Smith School, Boston's public school maintained exclusively for blacks, had reopened after being briefly closed by the integrationist faction.[298] John T. Hilton, William C. Nell and other integrationist leaders called a meeting of colored citizens at the Belknap Street church, adjacent to the Smith School, in order to "deepen impressions already made, and animate [the audience] with increased zeal and determination" in their opposition to the opening of the school.[299] The integrationists had already decided that until the School Committee relented and permitted integrated public schools, they would close the Smith School and establish a fund to pay private school tuition. A substantial number of black Bostonians, however, not only wanted the school to remain open for the time being, but opposed integrated schools altogether. Many of them attended the meeting that night.

The integrationists' leaders took center stage, seeking to harden the resolve of their supporters. They characterized Thomas Paul Smith, a leader of those opposed to integration, as "unworthy [of] their confidence or respect". Smith's supporters refused to stay quiet. The abolitionist newspaper, *The Liberator*, reported that some separatists "stationed themselves near the door, and, observing the cue of their leaders, persevered in disturbing the meeting by hisses, and various other demonstrations." The integrationists attempted to

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[298] The Smith School gained its name from a white benefactor, Abel Smith, who established a trust as part of his will that provided for continued maintenance of the school. The school for black children had originally been established in 1808 by the black community because they feared not only lack of equal treatment for their children in the white schools, but also outright hostility. This was used during the 1840s and 50s by the white pro-segregation majority of the school committee as a rationale for continuing the maintenance of an exclusively black school.

[299] *The Liberator*, Sept. 21, 1849. The *Boston Daily Journal* of Sept. 18, 1849 also reported that the meeting was held by the integrationist faction who wanted the Smith School shut down.

retain control of the meeting by instructing the audience to ignore the disturbances, but, having already been spurred on by John T. Hilton, William Cooper Nell, Henry Weeden, and other leaders of the integration faction, emotions were running high. Individual members of the audience "attempted to secure order"-- likely a euphemism for attempting to shove the opposition out of the building-- "and on the rioters retreating from the building, were immediately assailed by a volley of stones and other missiles, which [were] preserved as trophies of the prowess of those who resort to such methods".[300]

The *Boston Daily Journal* reported that after the meeting had begun, the integrationists "were disturbed by the appearance of a number of the friends of [the school]. A large crowd collected, and missiles of all sorts were used, breaking the windows of the church and bruising several persons." The melee came to an end only when the police arrived on the scene.[301] By this account, which seems consistent with the pattern of other meetings both before and after the riot, the black integrationist leadership intended the meeting to be for colored citizens who shared their viewpoint. A year earlier, Thomas Paul Smith had protested this very tactic. A meeting supposedly called to discuss pushing Boston's school committee for a new teacher, better physical conditions, and a cessation of the "strange management, the very peculiar systems and policy" of the School's white principal turned into a call for the abolition of the school. Smith complained that a committee, with B. F. Roberts as chairman, was appointed, "was out from three to five minutes, when Mr. Roberts re-entered, and the

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[300] Ibid.

[301] See the Boston *Daily Journal, Boston Traveler,* and the *Boston Evening Transcript* of September 18, 1849. None of the papers I surveyed gave prominent notice of the incident, giving it on average about ten lines of one column. The *Evening Transcript* cast it in a derogatory light by commenting that the question at the end of the riot became "Who throw'd de last brickbat?"

audience was thunderstruck by the announcement of a string of resolutions he had sometime previously written, referring exclusively to the abolition of the school. No debate had been intended. Nevertheless, a "protracted and warm discussion" ensued, after which the resolutions passed by a small majority. In the published account, Roberts described the support for the resolution as unanimous. Both men had an agenda, making it difficult to ascertain the truth; but the black integrationists did on other occasions publicly claim unaminity on the issue among black Bostonians when that clearly was not the case.[302]

The threat of violence had apparently been running throughout the day; some black youths sprung an impromptu boycott intended to keep black children from entering the school on the morning it opened for the fall term. Police broke up the boycott, but the number of students registering fell from the previous spring's 67 to only 23, though the number of students eventually increased to somewhere between 40 and 53 later in the fall and to 60 the following winter.[303] Though no violence followed, the wounds did not fade

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[303] Attendance figures contained in the loose papers of the Boston School Committee records, folders #1, 6, and 26 of the box covering 1849 (BPL); and from the Postscript of the *Report of a Special Committee of the Grammar School Board, Presented August 29, 1849, on the Petition of Sundry Colored Persons, Praying for the Abolition of the Smith School: with an Appendix* (Boston: J.H. Eastburn, City Printer, 1849), 70. This report, along with the minority report of those that favored granting the petition to desegregate the schools, and the majority and minority reports from 1846, are reprinted in *Jim Crow in Boston: The Origin of the Separate but Equal Doctrine*, edited by Leonard W. Levy and Douglas L. Jones (New York: Da Capo Press, 1974). The Committee's report, which added the postscript after the school opened, depicted the youths' boycott negatively. A more positive account is given in John Daniels, *In Freedom's Birthplace* (Boston: Houghton Mifflin Co., 1914), 448. James O. Horton notes that the boycotters "were well organized, holding frequent meetings which provided mutual support and communication." Though the integrationists do appear to have been organized as far as support and communication, their political and legal strategy did not have the same degree of organization; the boycott, for instance, apparently was not planned out well ahead of time. Horton's source for his conclusion is Carleton Mabee's *Black Freedom* (New York: The MacMillan Company, 1970). Mabee, aside from not consistently documenting his sources, does not give a picture of a well-thought out strategy of boycotts combined with legal action. I suspect the integrationists' strategy, like that of their twentieth-century successors, was frequently borne out of the needs of the moment. For Horton's description, see James Oliver Horton and Lois E. Horton, *Black Bostonians: Family Life and Community Struggle in the Antebellum North* (New York: Holmes and Meier, 1979), 74. For an examination of how

away; a year later black Bostonians opposed to keeping an all-black public school open declared that "our motto has been, now is, and ever shall be, 'No fellowship with the exclusive school system, its teachers or supporters."[304]

This riotous confrontation and simmering resentment between the colored citizens of Boston sounds a discordant note in the relatively harmonious symphony of like-mindedness generally attributed to antebellum African Americans. Historians of black America such as Herbert Gutman, Eugene Genovese, Gary Nash, and Sterling Stuckey, have described a common experience and culture and a similarity in worldview for both slave and free blacks that indicates the existence of a shared identity, forged in the crucible of slavery and hardening racial ideologies. Stuckey has shown, for example, that the experience of slavery and racism was central in eradicating cultural, social, religious, and political differences among African slaves and that it stimulated a resilient African American culture. Gary Nash describes how steadily intensifying racism further solidified Philadelphia's black community in the early republic era. While these seminal works have been invaluable contributions in revealing a complex process, there is a danger in assuming that this is the end of the story for African American identity formation and missing the significance of difference and division among African Americans.[305]

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twentieth-century strategies against discrimination evolved, see Stephen L. Wasby, *Race Relations Litigation in an Age of Complexity,* (Charlottesville: University of Virginia Press, 1995) and Mark V. Tushnet, *The NAACP's Legal Strategy Against Segregated Education, 1925-1950,* (Chapel Hill: University of North Carolina Press, 1987).

[304] *The Liberator,* August 15, 1850.

[305] Eugene Genovese, *Roll, Jordan, Roll: The World the Slaves Made* (New York: Vintage Books, 1972); Herbert Gutman, *The Black Family in Slavery and Freedom 1750-1925* (New York: Vintage Books, 1976); Gary B. Nash, *Forging Freedom: The Formation of Philadelphia's Black Community, 1720-1840* (Cambridge: Harvard University Press, 1988); Sterling Stuckey, *Slave Culture: Nationalist Theory and the Foundations of Black America* (New York: Oxford University Press, 1987).

Their arguments and others fit into Kenneth Kusmer's delineation of three primary forces shaping the black urban experience. Along with the "fundamentally nonracial" structural forces such as economic trends, Kusmer explains the other two as external forces-- the attitude and behavior of whites towards blacks-- and internal forces, or "how black urban dwellers have responded to their circumstances, either through the retention or creation of cultural values or institutions.... [and] the attitude of blacks towards whites, and the behavior that results from such attitudes."[306]

Yet attitudes and behaviors of free blacks to *each other* is a central but often overlooked fourth element that shaped black identity as well as black urban experience. Other historians have taken note of the Smith School dispute; none, however, have examined what it says about the ongoing construction of black identity and the attendant tensions.[307] While the responses of black urbanites to each other did not act independently of the three forces Kusmer describes, this neglected fourth element frequently manifested itself more overtly than any other in the daily experience of black urbanites. Structural forces were often not immediately tangible and the retention of cultural values and institutions could at times also be a long-term and abstract process; black urbanites' responses towards one another were typically concrete and immediate, especially when priorities clashed.

Emancipation presented black Americans with different sets of choices. Several important studies have demonstrated that free blacks in the early

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[306] Kenneth Kusmer, "The Black Urban Experience in American History," in *The State of Afro-American History: Past, Present, and Future*, ed. Darlene Clark Hine (Baton Rouge: Louisiana State University Press, 1986), 105.

[307] For a thorough narrative see George A. Levesque, *Black Boston: African American Life and Culture in Urban America, 1750-1860* (New York: Garland Publishing, Inc., 1994), 165-230; for another brief commentary see Horton and Horton, *Black Bostonians* (New York: Holmes and Meier, 1979), 70-76.

republic responded to freedom by establishing communities, creating institutions, and maintaining a significant degree of cultural continuity.[308] But little has been done to explore either how freedom complicated matters of identity, or the potential conflicts freedom presented as black men and women attempted to gain control of their immediate and future circumstances in different ways, formed different priorities, and pursued a variety of goals. With freedom came the incorporation of a legal rights ideology, but not necessarily a consensus on strategies to protect and pursue equal rights.

In *Thirteen Ways of Looking at a Black Man,* Henry Louis Gates, Jr., explores, among other things, the abiding complexity of what it means to be black in modern America. Pulling no punches, Gates lays bare some markedly different and at times oppositional perspectives held by a handful of notable black men. Wrestling with black identity is nothing new for African Americans; the men Gates profiles are dealing with issues that have deep historical roots.[309] Nor has the process of defining particular individual African Americans as anathema to black identity ceased-- Clarence Thomas, for instance, is frequently censured in public discourse because of his political and social stances, thereby placing him outside the black community. Precious little, however, in the historiography of pre-Civil War America has bothered with the long struggle of black Americans for self-definition. The dispute over maintaining a separate

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[308] See Gary Nash, *Forging Freedom: The Formation of Philadelphia's Black Community, 1720-1840,* (Cambridge: Harvard University Press, 1988); Robert J. Cottrell, *Afro-Yankees: Providence's Black Community in the Antebellum Era* (Westport: Greenwood Press, 1982); Horton and Horton, *Black Bostonians ;* James O. Horton, *Free People of Color: Inside the African American Community* (Washington: Smithsonian Institution Press, 1993); Shane White, *Somewhat More Independent: The End of Slavery in New York City, 1770-1810* (Athens: University of Georgia Press, 1991) and " 'It Was a Proud Day': African Americans, Festivals, and Parades in the North, 1741 - 1834," *Journal of American History* 81 (June 1984), 13-50.

[309] Henry Louis Gates, Jr., *Thirteen Ways of Looking at a Black Man* (New York: Random House, 1997).

school for black children in Boston was not the first manifestation. But because it dealt with two issues close to the heart of an oppressed people -- the immediate well-being of their children and how to shape a better future -- it crystallized some aspects of the diversity in thinking among black Bostonians concerning what it meant to be black in America.

Ironically, the Smith school had been originally established because in 1787 the state government, and in 1798 town of Boston, had turned down requests from its black citizens for a separate school. On both occasions, the explanation given was a lack of funds. After several years of conducting a school based in private residences, a school for black children was held on the bottom floor of the town's first black church in 1806. Abiel Smith was one of several white philanthropists who funded the school, and in 1815 the town began contributing $200 towards the annual budget, with the children's parents paying the other $300. Two other small primary schools for black children were also eventually opened by the city, though these schools did not become a focal point during the fight over integration. At the time, the city's financial support was no doubt a boon and taken as a hopeful sign by black parents. Ultimately, however, it gave the city grounds to exercise its authority in matters such as hiring and firing of teachers and headmasters, and, more significantly, enabled the white school committee to refuse to close the school and thereby maintain a segregated system.[310] The loss of control over the Smith school, a school founded at the request of Boston's African American community, resulted in the school becoming a magnet for community dissension.

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[310] George Levesque, *Black Boston*, 165-180; Horton, *Black Bostonians*, 70-72.

The first hints of a split among African Americans in Boston over the importance of having an exclusively black school surfaced several years before the issue became inflammatory. In 1843, *The Liberator* reported that a meeting of colored citizens in Boston passed a resolution disputing allegations that some of the "colored people, as a body, do not approve and support the efforts which the friends of equal rights have made" regarding school integration. It was probably true that few black Bostonians actively opposed integrated schools. But it was probably also true that some members of the black community resisted any move to shut down the Smith School. Early on in the dispute, some of the black community's leaders sought to marginalize members of the rank-and-file who held differing viewpoints by denying the existence any differing viewpoints. Six years later, it was apparent they had not succeeded; nevertheless, black integrationists proved unrelenting in their efforts to both castigate the white school committee and weaken their black opponents.[311]

The integrationists ratcheted up the stakes by tying the issue of integration and their opponents' support of the Smith School to 'blackness'-- in other words, to questions of identity. Two months previous to the riot, a group of integrationists met and unanimously passed a series of resolutions that were ostensibly directed at white Bostonians, particularly those in position to influence the school committee that would ultimately decide the matter. The resolutions laid down the gauntlet within the black community. They resolved that the Smith School, "being a caste, an exclusive school, [is] a GREAT PUBLIC NUISANCE, which should be immediately annihilated....we will not regard with confidence, any contrivance to quiet our efforts in relation to its abolition....it is

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[311] *The Liberator*, Feb. 10, 1843.

our hope, that no individual who is identified with us in complexion, will suffer himself to be used as a TOOL, to prolong the existence of that school."[312]

The emotional and symbolic weight of the terms used are telling and proved to be the beginning of a charged and acrimonious dispute. The rhetoric held a certain militancy- 'annihilating' the school- and calling for its abolition carried undertones of the larger struggle for freedom. But more importantly in considering what it meant for black identity is the phrase "those who would be identified with us by complexion." This loaded phrase would be used repeatedly in the days and months to come. The subtext was an acknowledgment that while all blacks were identified as one group by whites, for black integrationists, to be 'identified' with them by virtue of 'complexion' was not enough. The implication was that regardless of the means by which whites arrived at a definition of who was a member of the black community, being black meant something more than having a sable hue. The integrationists defined 'blackness' with greater sophistication and complexity than their white neighbors.

This stemmed in part from an ongoing attempt by black Bostonians to redefine, or at least to complicate, how Americans conceptualized race. 'Race' was by no means a fixed and concrete concept; historian David Roediger's evidence revealing the construction of whiteness indicates just how diverse and fluid racial ideologies remained in mid-nineteenth century America. While for some whites racial ideologies were already well established, others expressed uncertainty and ambivalence. Roediger notes that some whites grew less tolerant and more openly hostile to African Americans' public gatherings in northern cities during the 1830s; yet in September of 1850 a company of black soldiers received a warm response from New York City crowds during a

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[312] *The Liberator*, August 10, 1849. In this chapter all emphases in quotes from primary sources, such as capitalization and use of italics, are original and not added unless otherwise noted.

precision march in full dress. The effort mounted by the Boston School Committee to maintain segregated schools also evinces ambivalence towards race. In 1846 the committee's report implied that the African 'race' had some innate inferiority, while the 1849 committee, after hearing Thomas Paul Smith's eloquent defense of the Smith School, stated that if Smith "be taken as fair type of the African intellect, the question of organic differences in the capacities of the two races could no longer be seriously entertained." The point here is not to dispute the weight of historical scholarship that argues for a hardening of racial oppression in the urban north. But the response of the New York City crowd and the ambivalence of Boston's school committee suggests that racial oppression and racist ideologies were not absolute, uniform, or universal, especially in a society and culture that was still groping for a firm understanding of exactly what race was and where the boundaries lay.[313]

Black Bostonians attempted to exploit that uncertainty. They repeatedly argued that the issue was not race, but complexion. Successful several years earlier in eradicating Jim Crow laws from public transportation in Massachusetts, pushing for the acceptance of black men into Massachusetts militias, and fighting to end segregated units in the national military, black integrationists consistently referred to the difference between black Americans and white Americans as one of complexion, not race. In a petition on the militia issue, they introduced themselves as the "acknowledged citizens of this Commonwealth, (notwithstanding their complexional differences)". By the middle of the nineteenth century, 'complexion' and 'colored' were common self-designations while 'black', 'African', or 'race' became less frequent. William C. Nell even

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[313] David Roediger, *The Wages of Whiteness: Race and the Making of the American Working Class* (New York: Verso, 1991), 115-132; *The Liberator*, October 4, 1850; *Report of a Special Committee of the Grammar School Board*,48.

referred to prejudice and racism as 'colorphobia'.[314] This was a marked change from earlier in the nineteenth century.

The choice of terms, combined with their efforts and rhetoric, indicates that African Americans did not accept the social construct of race as immutable or fixed in antebellum northern society. The School Committee's majority report in 1846, which rejected the black integrationists' petition to open up all of Boston's public schools to black children, recognized that the integrationists' language and argument represented a threat to the existing racial hierarchy. The stakes were higher than allowing black children in previously white schools; underlying the challenge to segregation was a discourse about how a society delineated and maintained boundaries. Occasionally, this subtext rose to the surface. Noting that the integrationists had "so often and so confidently asserted, that the principle, on which the separate schools for colored children are maintained, is that of *complexion*, merely", the committee took issue with the public being told "over and over, that a darker or lighter colored skin, is made the ground of separating children." Reacting to the persistent "taunt that it might be difficult to decide on the requisite degree of ebony which a child's pigment must possess, in order to entitle him to the distinction of a colored child", the School Committee emphatically stated that color or complexion was "*not* the ground of distinction" for determining whether a child was to go to a black or white school. The boundary was established and maintained on the grounds of "*races*, not of colors." And race was not a categorization subject to the caprice of men; it was established by God, and "founded deep in the physical,

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[314] William C. Nell, *The Colored Patriots of the American Revolution, with sketches of several Distinguished Colored Persons: to which is added a brief survey of the Condition and Prospects of Colored Americans* (Boston: Robert F. Wallcut, 1855; reprint, Arno Press and the New York Times, 1968), 107-114. Nell and other black leaders also used the term 'colorphobia' in various issues of *The Liberator*.

mental, and moral natures of the two races" and "no legislation, no social customs, can efface this distinction."[315] Exhibiting strains of a romantic racialism that viewed every race as innately endowed with distinct talents, the majority report argued that "amalgamation is degradation" for both races since it threatened the "genuine virtues" peculiar to each race.[316] The report concluded by emphasizing the white committee's racial conception, describing the students as "colored children, or the descendants of the African race" whose unique educational needs due to their race -- needs the committee outlined as an inferior ability to use "faculties of invention, comparison, and reasoning" -- mandated separate schools.[317] The school committee's argument may have also been an example of Kenneth Kusmer's external forces on the black urban experience. Most whites defined blackness as being determined by one variable, race. That attitude of whites towards blacks likely contributed to many free blacks formulating a similar construction of their own identity as being primarily determined by what passed for an antebellum understanding of race. But for African Americans, that was not the only determining factor in defining what made one part of the black community. Other variables entered into the equation, in part because race itself was not a fixed concept in American society.

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[315] *Report to the Primary School Committee, June 15, 1846 on the Petition of Sundry Colored Persons, for the Abolition of the Schools for Colored Children, With the City Solicitor's Opinion, Documents of the City of Boston for the year 1846* (Boston 1846), 7. Also Reprinted in Levy, *Jim Crow in Boston.*

[316] Ibid., 13. On the increased acceptance of a romantic racialism, see George M. Fredrickson, *The Black Image in the White Mind: The Debate on Afro-American Character and Destiny, 1817-1914*, (New York: Harper & Row, 1971), "Uncle Tom and the Anglo-Saxons: Romantic Racialism in the North," 97-129.

[317] *Report to the Primary School Committee, June 15, 1846*, 27-29. The report allowed that black students were equal in some areas: "colored children will often keep pace with the white children" in "those parts of study and instruction in which progress depends on memory, or on the imitative faculties."

Even the school committee dodged the more elusive question, how race was determined, though they implied that complexion was the primary means.

Shortly after the School Committee rejected the petition for integration, *The Liberator* printed a rejoinder. Though the writer may have been white, the thinking was consistent with the arguments of the black integrationists. If segregation was truly based on race and not color, asked the writer, "why not have separate schools for the genuine Celtic Irish, who are as distinct a race from the Anglo-Saxon as the native Africans?" These Irish had "physical peculiarities almost as marked" along with a distinct language and therefore, according to the logic of the school committee, represented a greater risk to erode the 'peculiar virtues' of the white race. Since the school authorities condoned Irish children in any public school except the black schools, the determining factor was obviously complexion, not race. The resolutions the black integrationists passed during a meeting in July of 1849 made a similar argument, noting that "foreigners of all kinds... who are *white,* are not rejected."[318]

Not only were white foreigners admitted into the public schools, they were aggressively assimilated. In 1851, German immigrants -- some of whom lived on the same streets as Boston's black citizens -- petitioned the school committee for a separate school in which their children could receive instruction in German. The committee refused their request on the grounds that "it is the English language that the Germans must know and... they should begin as early as possible to learn the national characteristic and the peculiar development in human nature of those, with whom they are to be associated in life." Being educated in schools "German in their character" would only serve to place their children at a disadvantage. Ironically, the committee revealed its large racial blindspot by noting that "there are many

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[318] *The Liberator*, August 21, 1846; August 10, 1849.

classes in our community who desire separate schools, for various reasons which they think sufficient" and warned against setting a precedent, apparently for other ethnic groups. African Americans were clearly in a completely different category, so maintaining a separate school for black children did not set a precedent, since the reasons for separation were based on innate racial differences. The committee's greatest concern was that a separate German school, or other ethnic schools, would tend to "continue the German element & dispense with the American." This expression of nativism, typical for the era, pushed immigrants to forsake or at least minimize their cultural heritage and move towards becoming American in character as well as in legal standing.[319]

Schools, said the committee, were "designed by our lawgivers, to make American citizens - to furnish the best education for this purpose & for no other." Education benefited society as a whole and served "as a powerful instrument in support of the political institutions of our government."[320] This explains another facet for the school committee's unwavering opposition to permitting black children into the all-white public schools: African Americans were not desirable citizens, thus negating a key purpose of education. Black Bostonians, both the integrationists and the separatists, resisted this definition by defining themselves as Americans and as citizens. The integrationists attacked

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[319] From the loose papers of the Boston School committee, box covering 1850 (BPL), contains a list of children by ward and street. The German immigrants' petition and the committee's response is in the box covering 1851-1852. On antebellum nativism, see Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party before the Civil War* (New York: Oxford University Press, 1970), 226-260; on nativism during and after the Civil War, see John Higham, *Strangers in the Land: Patterns of American Nativism, 1860-1925* (New Brunswick: Rutgers University Press, 1955).

[320] From the response of the school committee, in the loose papers of the Boston School committee, box covering 1851-1852 (BPL).

the committee's thinking from another vantage point by attempting to exploit the uncertain boundaries of antebellum racial conceptions.

This tactic had some moderate success. Sixteen members of the school committee, composing the minority who supported the integrationists, adopted the integrationists' argument. The public schools, they argued, rested upon a constitutional principle that "all men are born free and equal." This principle had been established with the Puritans and made law by the Constitution. Therefore, any exclusive schools must be made "upon some distinction, recognized by the laws of God and man, stronger than the distinctions of birth and origin, of religious or political faith, of wealth or poverty, of social condition and standing. It must be upon a distinction founded in the constitution and the laws." But the majority of the committee had made "*color*, and *color* alone" the only distinction. While the white minority did go so far as to argue that races did not exist -- a position black integrationists did not subscribe to either -- their language echoed that of the black leaders.[321]

Other whites sympathetic to African American integrationists also adopted the tactic of questioning the legitimacy of race as a determining factor, underlining the potential threat to established racial boundaries. Responding to the school committee's 1849 decision upholding segregation, a committee from the First Wesleyan Church of Boston wrote that since

> the children of all foreigners-- many of whom are rude in manners, and corrupting to good order, are freely and without question admitted to all the schools, we must feel the exclusion of the children of native Americans, whose industry and love of order contribute to the wealth and peace of the city-- whose forefathers bled for the country's freedom; and who are equally taxed for the support of schools; ... is a most unjustifiable and every way dangerous distinction.[322]

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[321] From the minority report contained in Levy, *Jim Crow in Boston*, 5-7.

This protest also reflected the growing sentiment against immigrants and Catholics that would help catapult the Know-Nothings to power in Massachusetts. In Boston, with a growing influx of Irish Catholics, Republicans and Know-Nothings voiced fears that the absolutism they saw represented in Catholic traditions would undermine liberty. The opposition of many Irish to anti-slavery merely fueled Republican and Know-Nothing rhetoric, which stressed Americanization.[323] Black integrationists exploited this tension by arguing that African Americans had long inculcated American concepts of liberty; indeed, argued the integrationists, some of their ancestors had fought in the Revolution. Furthermore, the push for the right to be able to have black children go to the schools in their own neighborhoods had everything to do with seeking liberty; if anything, it was the school committee who represented a threat to liberty. By melding claims to an American identity with a critique of the school committtee's rationale that made 'complexional distinctions' the basis for segregation, the integrationists questioned the validity of northern society's racial conceptions.

Black and white arguments for integration that challenged the uncertain yet dominant racial conceptions failed to make any headway with the majority of the school committee. This did not deter Boston's black activists from continuing their attempt to move the focal point of the argument to the more subjective and slippery ground of skin color. The resolutions passed in the July, 1849 meeting stated again that some of Boston's children "are refused common school privileges, *solely on account on complexion.*" An 1851 broadside

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[322] Letter from the First Wesleyan Church to the Boston School Committee, December, 1849. Contained in the loose papers of the Boston School Committee records, folder #26 of the box covering 1849 (BPL).

[323] Foner, *Free Soil, Free Labor, Free Men,* 228-231.

addressed to the state legislature repeated the charge that "citizens of Boston, have for a number of years been deprived from the enjoyment of our rights...on account of complexion."[324]

Dominick LaCapra, describing the difficulty of writing about race, notes that "it is decidedly difficult to overcome the tendency to privilege whiteness as the master-text-- the valorized and often unmarked center of reference-- and to identify the nonwhite as 'other' or 'different.' " In a sense, by trying to make Irish immigrants an 'other', and by persistently talking about complexion-- which, because of miscegenation, varied greatly-- the integrationists were attempting to rewrite the 'master-text' by muddling the already uncertain concept of race. George Fredrickson has noted that in the mid-nineteenth century, Americans were no longer "being characterized primarily by their adherence to a set of political and social ideals allegedly representing the universal aspirations of all humanity, but democracy itself was beginning to be defined as racial in origin and thus realizable perhaps only by people with certain hereditary traits." Thrusting a contending narrative into this rewriting of American identity, black integrationists reasserted the broader outline of American identity by stressing those "political and social ideals allegedly representing the universal aspirations of all humanity." Making ideals the 'master-text' was more inclusive. Anyone could adopt the ideals, but African Americans could not adopt white skin.[325]

This attempt to confound the bounds and definitions of race by stressing complexion and pointing to distinguishing variables of other white ethnic groups had no discernible impact on the School Committee's thinking. Though

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[324] *The Liberator*, August 10, 1849; "EQUAL SCHOOLS FOR ALL WITHOUT REGARD TO COLOR OR RACE", Boston, May 21, 1851.

[325] *The Bounds of Race: Perspectives on Hegemony and Resistance*, ed. Dominick LaCapra (Ithaca: Cornell University Press, 1991), 2; Fredrickson, *The Black Image in the White Mind*, 101.

this raises interesting questions regarding the ongoing formation of racial ideologies in the antebellum North, the focus here is on what this language and debate meant to African Americans and the ongoing formation of black identity as free people of color found themselves pitted against one another.

Little of the available evidence hints that the parents opposed to closing the city's black schools were black nationalists. Some of the men who led the movement to keep the all-black Smith School open supported other measures aimed at integration, such as opening up Massachusetts' militias to black men. At most, they were 'separatists' in a different sense than the term's modern connotations. They arrived at a separatist stance reluctantly, out of necessity, and not because of a well-defined black nationalism, though the seeds of a moderate form of nationalism may have been present. Thomas Paul Smith, the most visible of the 'separatists', supported a resolution passed at a Boston anti-colonization meeting declaring that black citizens had decided "under all circumstances, to cling to the land sanctified by the blood of our fathers; and in this land, upon this soil, beneath the flag of stars and stripes" to fight for slaves' freedom so that "when they are free, we will stay to enjoy with them the land their labor and blood have enriched." The symbolic language of the resolution underscores how keenly American these men and women conceived of themselves-- they employed a potent nineteenth century American imagery, rooted in an independence gained by land and the Revolution. On the same page of this issue of *The Liberator*, an account of an anti-colonization "Colored People's Meeting" in New York City stressed both the transatlantic black heritage and the American strain of antebellum African American identity. The New Yorkers argued that "we do not trace our ancestors to Africa alone. We trace it to Englishmen, Irishmen, Scotchmen; to Frenchmen; to the German; to the Asiatic,

as well as to Africa. 'The best blood of Virginia courses through our veins.' "[326] These black New Yorkers swung a two-edged sword. Cutting through racist attempts to deny rights by linking their claim for full citizenship to miscegenation, they affirmed their Americanness while pointedly reminding whites of their own racial infidelity. White infidelity fortified the African American rhetorical arsenal by giving them a weapon for challenging racial conceptions and weakening colonizationists' arguments that implied black Americans were somehow less American than white ethnic groups.

In addition to identifying themselves as Americans and seeing the racism behind many of the colonization schemes, most free blacks opposed colonization based on three points: a firm belief in their right to the heritage of the Revolution and the promises of the Constitution, a hope for a brighter future in America, and a negative conception of Africa. While black Americans did not deny or minimize their African heritage, and frequently glorified it, they did not see Liberia or any other part of Africa as desirable. The Boston resolutions described it as "the land of the crocodile, the burning sun, the fever, and of death," and the New Yorkers referred to it an "inhospitable region" of "deep superstition and idolatry." Even those African Americans supporting colonization saw it as a land in need of redemption, a land that could be civilized and evangelized-- in other words, made into a relocated America, but black and free from racial oppression.[327]

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[326]*The Liberator*, April 4, 1851.

[327] For instance, see Daniel Peterson, *The Looking Glass: Being a True Report and Narrative of the Life, Travels, and Labors of the Rev. Daniel H. Peterson, A Colored Clergyman; Embracing a period of time from the year 1812 to 1854, And Including His Visit to Western Africa,* (New York: Wright, 1854); Paul Cuffe, *A Brief Account of the Settlement and Present Situation of the Colony of Sierra Leone, in Africa* (New York: 1812).

This is but one example of the complex nature of northern black identity-- many free people of color affirmed their African heritage while conceiving of that continent in broad and frequently denigrating terms. Free black people were able to incorporate a glorified African past into their self-conception while berating that continent's present condition. Paralleling that, most free people of color affirmed themselves as truly and completely American, proclaiming the unique heritage of this country while unhesitatingly condemning the unrelenting oppression of black Americans, slave and free. Within this context of fervent hope and identification with the promise of America, the integrationist faction attacked Smith and his supporters for their opposition to closing Boston's black school.

The quandary for the integrationists in their two-front battle against the separatists and the School Committee was that their rhetoric condemning the latter strengthened the case of the former. The integrationists, quite sensibly, called attention to the poor logic in the School Committee's rationale (which was not hard to do), and argued that it boiled down to prejudice-- or 'colorphobia'. Pointing to the true motives behind the committee's rationale simply reinforced what the separatists had been saying all along-- that because of rampant prejudice, forcing black pupils into white schools "would interrupt or retard their elevation."[328]

There are a few shreds of evidence that hint at the motives and thinking of Thomas Paul Smith. He was one of a handful who supported the formation of a black political association in 1847 "for the purpose of acting with or against any of the anti-slavery bodies or societies now in existence." Key leaders of the black integrationists disagreed. A group led by John T. Hilton, Robert Morris,

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[328] *The Liberator,* February 15, 1850.

E.B. Lawton, Henry Weeden, passed a resolution stating that "it is not necessary to form an association among us, for the purpose of acting politically in regard to slavery." Weeden and William Wells Brown (who, when presiding over a New England black convention over a decade later, said that he was "unfavorable to any gathering that shall seem like taking separate action from our white fellow-citizens") spoke in support of this motion. Among the four men who spoke against it- who wanted to form an exclusively black anti-slavery association with political ends- were Smith and Henry Bibb. With a clear majority against them, Bibb offered a compromise with an amendment that stated "the people are under the highest obligation to remove Slavery by moral and political action." The next resolution reaffirmed the majority stance against "the formation of any society... calculated to induce the people to join any existing religious sects or political parties, with the hope or expectation that they will aid the cause of the slave's emancipation." Hilton and his supporters saw no need to rock the boat and were satisfied with the current integrated anti-slavery organizations; Smith, expressing a moderate form of black nationalism, clearly felt otherwise.[329]

The severity of the rhetoric integrationists aimed at Smith was likely due in part to his heritage: he was the nephew of Thomas Paul, the first pastor of Boston's first black church. Some of the black integrationists no doubt remembered growing up under Paul's spiritual tutelage. The scene of many of the meetings regarding the school issue and other seminal events in the life of Boston's black community took place in the very church that Smith's uncle had helped found. When John T. Hilton and other black integrationists called Smith a traitor, they may have spoken with a sense of personal as well as political

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[329] *The Liberator*, January 28, 1848. William Wells Brown quote taken from *Proceedings of the Black State Conventions, 1840-1865*, Philip S. Foner and George E. Walker, eds., (Philadelphia: Temple University Press, 1980.) 207. The New England Colored Citizens' Convention was held in Boston in 1859.

betrayal. It is difficult to know how much of the rhetoric was born out of personal hurt, however. Smith's stance should not have been a complete surprise; his uncle had expressed separatist sentiments during the 1820s. Thomas Paul was sympathetic to emigration to Haiti, and while not an outspoken supporter of colonization, he was not entirely opposed to it. Smith's stance in the school issue was not out of the family character.[330]

Despite some of the asperions cast upon him, Smith did support black agitation to secure civil rights. Two weeks prior to the September 17 riot, one of Smith's compatriots, John H. Roberts, argued that the separatists favored "removing all legal disabilities from our oppressed people," including forced segregation. But they did not favor "the abolition of exclusive institutions among ourselves, literary, religious or scientific, until such times as we can enjoy more liberty and equality among the whites."[331] This reluctant separatism, born out of a feeling of the necessity to protect their children from the scorn of white teachers and students, likely typified the sentiments of many black parents who wanted the Smith School to remain open. Lobbying for a black headmaster and black teachers a year earlier, three unnamed black citizens argued that "the colored citizens of Boston, feeling the greatest anxiety that their children should be well educated... believe that their instructor should be one who is identified with themselves, who is well educated, who would naturally feel for and sympathize with them...they desire it may be taught by one possessing the affection of the children, and the confidence of their parents and guardians." The writers assumed that a white teacher would not generate the same degree of

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[330] See Horton and Horton, *Black Bostonians*, 41.

[331] *The Liberator*, September 7, 1849.

confidence and affection as a black teacher. Petitions supporting Smith indicate that this kind of moderate 'nationalism' was echoed by other black parents.[332]

These parents wanted to ensure that their voice would continue to influence decisions affecting their children's education. By dispersing their children throughout Boston's public schools, integration threatened to scatter their voices. Ironically, William C. Nell, perhaps the most ardent of the integrationists, inadvertently confirmed their fears. When the state legislature eventually intervened in 1855 and mandated integration, he complimented the "mothers who accompanied me to the various school houses" to ensure their children's admittance.[333] Nell likely did not think of the implications of black children and parents going to "various" schools instead of one.

The separatist parents no doubt also feared the loss of an institution that served as an arena of common interest. Integrated schools posed the danger of splintering Boston's black community; in many ways the Smith School served as a focal point for black families. In many northern cities black students periodically demonstrated their musical, mathematical, or other acquired skills. Black and abolitionist newspapers frequently carried notices of "exercises in declamation and singing [for] a large audience of family and friends," indicating the importance of the local black school as a source of pride.[334] Black schools, like

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[332] Contained in the loose papers of the Boston School Committee records, folder #33 of the box covering 1847-48, BPL. Other letters and petitions with signatures contained in folders #33, 35-37. There is some question regarding the legitmacy of all the signatures; Smith was accused of forging some of them. Smith responded in another letter, writing that he signed the names of those who agreed with him but could not write their names. There are a few names that appear to be in Smith's handwriting with an 'x' next to the signature. The 'x' was likely made by the individuals whose name Smith wrote.

[333] "Triumph of Equal School Rights in Boston," December 17, 1855. This was a celebration with speeches by Garrison, Charles Lenox Remond, and other notables. Nell was the primary honoree.

[334] *The Liberator*, April 19, 1850. This particular exhibition was to raise money to "advance the cause of Equal School Rights."

black churches, performed important functions for black urbanites beyond educating their children by providing reasons to meet, to reaffirm common goals, and as a public display of African American identity to black and white city dwellers. An integrated school system may have delivered a better education for black children, as Boston's integrationists believed; but it also meant sacrificing an institution that helped maintain community, especially for those parents who had little or no involvement in the city's black churches.

The price of integration was simply too great for many black Bostonians. In their eyes, black teachers being responsible for the education of black students outweighed any potential benefits of achieving a dubious victory for 'rights' or gaining access to the superior facilities of white schools. Reluctance to lose an institution that maintained black identity, the loss of control over their children's education, and the potentially damaging effects of whites' racism on their children all added up to make the uncertain benefits of integration an untenable goal.

Herein lies one key difference in the two factions. The integrationists, whose language depicted the issue in terms of an eternal battle for truth and justice within a distinctive American setting, called for sacrifice in order to gain what was rightfully theirs. Citizenship demanded the aggressive pursuit of the equality and opportunity for which their fathers had died. Deprived of the right to send their children to public schools attended by white children, the oppressed black American had a duty to "use every effort to obtain an unqualified and an uncompromising possession" of their rights. These men and women viewed free and unrestricted access to the public schools-- schools supported and open to every other American-- as part of an ongoing effort to make it clear that the Constitution's "we the people" included African Americans. Others in Boston's

black community, identifying themselves no less as Americans, had different priorities and a different conception of what citizenship meant.[335]

The stance of the separatists defined a space between themselves and white society. Being a citizen meant having the right to protect that space and pursue their own interests. While they were not inactive or apathetic regarding their legal, political, and economic disadvantages, meeting the daily demands of life was often taxing enough without the added burdens of waging lofty battles about 'rights' with little prospect of measurable improvements in white attitudes. For many free people of color, working long days and keeping families intact *was* being active in improving their lot, and life left room for little more. Citizenship simply meant the ability to continue doing so without interference from whites.

These parents recognized that changing the written law might mean nothing in day-to-day life. In nearby Salem there was no law prohibiting black students from any public school, but there were few if any black students. When the *Salem Gazette* printed an editorial defending the labeling of that town's Latin Grammar School as the first 'free' school, open to any student, black or white, the editor argued that lack of ability was the only reason there happened to be no black students. A 'colored citizen' wrote to *The Liberator*, arguing that while there was no 'law', public opinion like that voiced by the *Gazette*'s editor was in effect a more potent law. White prejudice kept black students away.[336] Separatist parents may have agreed in principle with the larger goals of the integrationist

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[335] *The Liberator*, August 10, 1849; regarding this perspective among nineteenth century African Americans, see Vincent Gordon Harding, "Wrestling toward the Dawn: The Afro-American Freedom Movement and the Changing Constitution," *Journal of American History* 74 (December, 1987): 718-739.

[336] *The Liberator*, September 23, 1842.

faction, but in practice the reality of experience with white society had taught them that ideals did not change white behavior. Unwilling to trade their children's welfare for what seemed to be intangible and uncertain future benefits of education in supposedly superior white schools, these parents opted for a safer immediate course of keeping their children under black supervision.

Attitudes like this explain black leaders' complaints throughout the antebellum era about the lack of participation and enthusiasm among free blacks in the abolition movement; the school struggle generated similar criticisms. One of the stronger rebukes to the African American community came at the end of the fight, when integration had been achieved, and a celebration was held honoring William C. Nell for his central role. Charles Lenox Remond, one of several notable speakers, excoriated the defeated opposition, saying that he "longed to see the day when it would no longer be possible for any man or woman to point to pro-slavery colored churches, and to the spirit of colored women who send their children to pro-slavery schools, as evidences of inconsistency on their part."[337] The 'pro-slavery' churches were African American congregations not active in the abolition movement, and the 'pro-slavery school' was the Smith School. In Remond's mind any church that directed insufficient energies towards abolition might as well have been an apologist for slavery. The church-goers at whom he hurled this charge may or may not have been apathetic, but they probably felt trying to maintain control over their daily lives consumed enough strength without shouldering additional responsibilites that offered questionable returns relative to the energy expended. Their opposition to closing black schools earned them Remond's wrath. His tactic of increasing pressure on the separatists by connecting the

[337] "Triumph of Equal School Rights," December, 1855.

school debate to the national issue of slavery typified the dispute's sharp language.

With the lines of demarcation clearly drawn around the Smith School, the rhetoric of the integrationists intensified. The separatists, who had petitions representing about 13% of Boston's adult black population, were castigated as traitors. Thomas Paul Smith was labeled as "a young, ambitious bigot." Two days before the School Committee's ruling in late August, Smith and John H. Roberts attended a meeting that apparently was open to both factions. Smith and Roberts acknowledged that they represented a minority in the black community. Hearing this, "John T. Hilton replied, that [Smith] was mistaken in representing himself in the minority, for John C. Calhoun, Henry Clay, the American Colonization Society, and the entire pro-slavery community, were with him." Among the resolutions passed at this meeting was one reminding the black minority that "our zeal [shall not] be in any degree abated by the insidious efforts of those identified with us in complexion... who... are reverting, by their *animus*, the hand upon the dial-plate of our liberties." At another meeting two months later, Henry Bibb compared this internal struggle to other "instances where colored men have been betrayed in the most auspicious moment of a freedom struggle by traitors," likening the separatists to free black men who, for a price, aided slave catchers in northern cities.[338]

The integrationists' rhetoric continued to place the school issue within a larger context. They compared the leadership group to Christ's apostles, and called the struggle a "crisis as important... as any this side of eternity, it being none other than the cause of truth and right against prejudice and

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[338] Smith was called a bigot in a letter dated August 6, 1848, in the loose papers of the Boston School Committee records, folder #34 of the box covering 1848 (BPL);*The Liberator*, September 7 and November 9, 1849.

expediency."[339] Though lofty language like this was not unusual in antebellum America, its ubiquity does not mitigate the integrationists' sincerity. Fighting to secure opportunity for their children to be educated on the same terms as white children so they would have a chance to overcome oppression was indeed a "great and important undertaking." Because the future appeared to rest on this matter, black integrationists related it to other great historic struggles for spiritual and earthly freedoms, from the Israelites' battles against pagan peoples to the American Revolution. But this came with a price. Pushing the school dispute into such portentous territory, and cloaking it with faith, citizenship, and the future of free people of color, forced the integrationists to intensify the virulence of the language aimed at free people of color opposed to integrated schools. Doing so led the integrationists to attempt to establish the boundary of blackness.

For the integrationists, boycotting the Smith School became, at least briefly, a means by which blackness could be defined. Arguing to both the white and black community that there was no difference other than complexion posed an unforeseen problem-- what, then, did make a man or woman 'black'? As in other northern cities, skin color could vary greatly among free people of color in Boston. While most black Bostonians were not hard to identify as having African blood in their veins-- and thus were black as far as white society was concerned-- the implication of the integrationists' argument was that complexion was a subjective categorization. Color alone did not provide a sufficient basis for classifying groups of people. And yet the integrationists clearly perceived themselves as a distinct group within American society. For a time, they attempted to make one's stance on the school issue, which was tied into a host of larger issues, a marker identifying who belonged.

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[339] *The Liberator*, September 7, 1849.

The integrationists sought to make the price of opposing integrated schools high because they recognized the difficulty of achieving integration. When they spoke of rights and doggedly grounded their claims in the Constitution, their white opponents did likewise. Legal historian Hendrick Hartog has described how the efforts of one group to claim rights means negating supposedly constitutionally established rights of other groups. In this case, white segregationists argued that they possessed the right to keep schools segregated, and that white parents had a right to not have their children go to school with black children. This ostensibly served the public good by preserving harmony and providing education aimed at white children's alleged innate talents, and targeting black children's alleged innate deficiencies. Success by the black integrationists spelled the elimination of that interpretation of rights and the validation of their own interpretation of rights.[340]

Hartog has noted that "when presented as claims to negate rights, rights readily become a focus for group organization and identity." Though Hartog applied this primarily to twentieth-century civil rights movements, many of the dynamics are similar.[341] Many black Bostonians did indeed focus on their individual and corporate rights to have access to all public schools. And on some level, black integrationists must have known that their struggle to open up Boston's public schools to their children challenged the rights claims of white segregationists. As black integrationists' identity consolidated through focusing on their own rights claims and in response to the difficulty of realizing those claims, it made the lack of support and undermining actions of the black separatists all the more galling.

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[340] Hendrick Hartog, "The Constitution of Aspiration and 'The Rights That Belong to Us All'" *Journal of American History,* 74 (December, 1987), 1023.

[341] Ibid.

Without question, the integrationists recognized that a fractured community weakened their fight for expanded civil rights. To some extent, their language of separation -- that any African American who did not link arms with them in this battle ought to be ostracized from the black community -- represented an attempt to make the cost of disagreement so high that few, if any, black men and women would fail to support the integrationists' position.

Black identity, then, was not only or even primarily a matter of degree of complexion, but a combination of physical, cultural, and political variables. Even culture could vary significantly, as some black Bostonians were raised in southern slave societies, some in northern urban areas with a significant black population, and still others in the rural north. Though most shared certain cultural aspects, differences existed. Making one's political stance a defining characteristic had the advantage of being inclusive regardless of cultural background or skin tone. This is why a man like Henry Bibb, described as "almost a clear white," was identified and accepted as a black man.[342] Bibb's past as a slave and his present activism translated into unquestioned acceptance in the black community. Had Bibb chosen to pass as a white man, his acceptance in the black community likely would have been challenged.

The integrationists did remonstrate against accepting the separatist blacks and blamed the separatists for having a part in the failure of integration in 1849. One week after the School Committee rejected the 1849 petition for integrated

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[342] Regarding how black culture in the North resembled and differed from slave culture, see William D. Pierson, *Black Yankees: The Development of an Afro-American Subculture in eighteenth Century New England,* (Amherst: University of Massachusetts Press, 1988); and Shane White, *Somewhat More Independent: The End of Slavery in New York City, 1770-1810.* On description of Bibb, see correspondence from the Connecticut State Convention of Colored Men in 1849, reprinted in *Proceedings of the Black State Conventions, 1840-1865,* ed. Philip S. Foner and George E. Walker (Philadelphia: Temple University Press, 1980), vol 2, 25. Bibb said his father was a white slaveowner and described his mother as having "slaveholding blood flowing in her veins." See Henry Bibb, *Narrative of the Life and Adventures of Henry Bibb, An American Slave* (New York, 1850; reprint, Mnemosyne Publishing Co., 1969.)

schools, a meeting of colored citizens denounced the Committee's decision and targeted the dissenters in their midst. Since "Law, justice and God are on our side," the black integrationists declared that the dissenters' "deeds and their inevitable results imperatively call for our strongest censure," and cast their "evil machinations" in biblical terms of betrayal.[343] The integrationists believed that much of white Boston had begun to support opening up the white schools, and thus the black separatists had thrown their weight behind the black schools at the worst possible moment. They were, therefore, "false brethren." Any "colored persons who are not for us in this trying hour, must be counted in the ranks of those who would deprive us of our heaven-decreed rights."[344] The knife in the back was only thrust deeper when Thomas Paul Jr., son of the long-time pastor of the city's first black church (in which most of the meetings mentioned here were held), agreed to become the new headmaster of the Smith School. Paul, a Dartmouth graduate, raised the stature of the school. His placement was a boon for the separatists, since they had requested him as the school master over a year earlier. Paul no doubt strengthened their position within the black community.

Part of the separatists' appeal to some within the black community lay in their moderate strains of nationalist sentiment. Thomas Paul Smith had moved to establish a black political party early in 1848, but was voted down by a cadre of black men who had a long track record of favoring integrated parties.[345] In 1848, the address at the National Convention of Colored Freemen in Cleveland

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[343] *The Liberator*, September 7, 1849.

[344] Ibid., September 21 and October 5, 1849.

[345] Ibid., January 28, 1848. William Wells Brown, one of Smith's opponents on this issue, would state over a decade later that he was "unfavorable to any gathering that shall seem like taking separate action from our white fellow-citizens." Quote taken from *Proceedings of the Black State Conventions, 1840-1865*, vol. 2, 207.

declared that only ten years previous, "many of us uttered complaints against the faithful abolitionists, for the broad assertion of our rights; thought they went too far, and were only making our condition worse." Though the address insisted that this thinking had nearly disappeared by 1848, it apparently still characterized a portion of the black community. The separatists in Boston were saying essentially the same thing about the white and black integrationists: because of pervasive prejudice, the 'broad assertion' of the rights of free people of color was not always welcome. The speaker at the convention went on to encourage association with whites; some black citizens remained less than enthused. Through their determined opposition, the separatists tried to control the extent of association for themselves and their children. Black Bostonians, even in the city wards with the heaviest black concentration, lived with and among white folks-- all the more reason why some black urbanites wanted to maintain control of the few arenas in which they had minimal association with white Bostonians.[346] The separatists loathed sacrificing the Smith School, a concrete manifestation of black identity.

The separatists conceived of black identity broadly by appealing to the common experience of prejudice. Thomas Paul Smith, responding to the barrage of rhetoric that challenged the place of the separatists in the black community,

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[346] *Report of the Proceedings of the Colored National Convention* (Rochester, 1848), 18. Reprinted in *Minutes of the Proceedings of the National Negro Conventions, 1830-1864* , edited by Howard Holman Bell (New York: Arno Press, 1969). On population distribution for Boston see Leonard Curry, *Free Blacks in Urban America,* (Chicago: University of Chicago Press, 1981). Henry Taylor's article on Cincinnati is instructive on how antebellum black urban populations, even when concentrated in particular sections of a city, were still typically interspersed among white tenants and homes. See Henry L. Taylor, "On Slavery's Fringe: City-Building and Black Community Development in Cincinnati, 1800-1850," in *Ohio History* 95 (1986), 5-33. Also, Kenneth Kusmer has noted that even by 1910 there were only 5 northern industrial cities with a high enough index of dissimilarity to indicate the beginnings of distinct 'black belt' of segregation in the North. See Kusmer, "The Black Urban Experience in American History," in *The State of Afro-American History: Past, Present, and Future,* ed. Darlene Clark Hine (Baton Rouge: Louisiana State University Press, 1986), 91-122.

declared that "we are colored men, exposed alike to oppression and prejudice; our interests are all identical--we rise or fall together." He was echoing the call to common cause and identity expressed at Cleveland's Colored Freeman convention. The same address that called for cooperation with white institutions and associations-- which Smith had probably read when it was published in *The Liberator* -- also reminded free people of color that "we are one people--one in general complexion, one in a common degradation, one in popular estimation. As one rises, all must rise, and as one falls all must fall." Smith adopted this language, used it to emphasize a common identity, and argued for black control of the black future.[347]

Ultimately, most of the separatists were motivated less by a nationalist philosophy than by the exigencies of the moment. Intentionally or not, their separatism held the potential of stimulating a black nationalism that might have offered a more radical alternative to white hegemony than the integrationists -- if, that is, an antebellum black nationalism had been a viable political entity. The separatists tried to use a rights discourse to protect a space for themselves, a space over which they could maintain control. Had they succeeded, there would have likely been a greater potential for fostering a black identity infused with a well-defined black nationalism. But success may have also meant diminished opportunity to engage white Americans on matters of legal principle. A classical black nationalism, which would have been difficult to realize both because of the threat it would have posed to white hegemony and the limited means of ordinary black people, may have also precluded maintaining a dialogue about rights.[348]

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[347] *The Liberator*, February 15, 1850; *Report of the Proceedings of the Colored National Convention* , 18.

The integrationists, through their more active engagment with white legal institutions, attempted to exploit the ambiguities in white racial thinking while wielding claims of constitutional rights. When challenging legally defined racial barriers, the integrationists used twin strategies of employing a rights discourse laced with historical claims of an American identity, and a racial discourse that questioned ill-defined racial boundaries. The argument for integration, perhaps not as radical as a black nationalism on the surface, not only represented a challenge to white hegemony by threatening to reduce legal barriers to education and opportunity, but also attempted to make political activism a condition of African American identity. This held potential to challenge white hegemony by ensuring that black protest and activism became an indelible part of what it meant to free, black, and American.

But the black integrationists' challenge to white hegemony, contrary to a classical black nationalism, used the "institutional logic" that Kimberle Crenshaw describes. Black integrationists called Americans to live up to the promises of their revolutionary heritage and the principles of the Constitution. They spoke the lingua franca. By focusing on the right to participate in society on all levels, they legitmated the principles of a professed egalitarian society. They also legitimated the legal system by ultimately succeeding in getting legislation passed that forced the School Committee to open up the public schools. Success in turn reaffirmed that fighting for legal rights was part of what it meant to be African American.[349]

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[348] For a useful definition of classical black nationalism, see Wilson Jeremiah Moses, *Classical Black Nationalism: From the American Revolution to Marcus Garvey* (New York: New York University Press, 1996) 2.

[349] Kimberle Williams Crenshaw, "Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law," *Havard Law Review* 101 (May, 1988) 1331-1387.

In the end, it is doubtful that either faction succeeded in defining black identity solely on its own terms. The two groups had much in common: both groups drew on the same repository of American imagery and heritage as a part of their identity, and both employed a discourse of rights. They used their claims to the rights of citizenship for different ends, but the language stemmed from a common ideology shaped by the Constitution. In addition, black Bostonians shared a common lifestyle, culture, and most were in the same economic class. And Smith knew he was appealing to the most common denominator when he spoke to mutual experiences of facing oppression and prejudice. Countering that appeal, the integrationists used a tactic that African Americans often still employ in publicly defining how 'black' one is: supporters of political stances that seemed opposed to black America's local and national interests were characterized as being outside the black community. This tactic was possible because these were *free* people of color with a voice through petitions, newspapers, and pamphlets. Furthermore, in the courts and legislature, and with suffrage, there were institutional channels of protest available. The same, however, was open to the separatists, and their response exacerbated tensions within the black community and within black identity.

Black identity continued to be shaped by a variety of forces. As free people of color fought on an individual and institutional level for equality, ongoing mediation within the black community was central to identity formation. When the Know-Nothing legislature passed a bill opening the public schools to black children, and the School Committee closed Smith School in the fall of 1855, these tensions were not necessarily resolved-- just submerged, waiting for the chance to emerge once again in different forms over different issues.

Conclusion

In the spring of 1851, in the wake of the Fugitive Slave Law, the Boston Vigilance Committee nailed up posters around the city warning African Americans to "Keep a Sharp Look Out for KIDNAPPERS, and have TOP EYE open." More ominously, the posters cautioned them to "avoid conversing with the Watchmen and Police Officers of Boston," since the mayor and alderman had empowered law enforcement officials to detain any black man or woman they suspected of being a fugitive slave. Not only were black Bostonians to merely avoid talking with the police; they were instructed to "Shun them in every possible manner, as so many HOUNDS on the track of your most unfortunate race."[350]

Over a hundred years earlier, a black man named John Woodby had been imprisoned by one of the town watchmen and only freed after paying thirteen shillings. Woodby -- who would later himself serve as a temporary watchman during smallpox outbreaks -- went to the next meeting of the selectmen and lodged a complaint, saying he had been held "without legal process, which he humbly Apprehends is against Law and Justice."[351] Woodby must not have been overly concerned with seeing the watchman punished; he did not appear at the next selectmen's meeting when they hauled the watchman before them and, since Woodby did not appear, dismissed him "with a Caution to act prudently in all such matters for the

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[350] A copy of the poster is reprinted in *The Black Abolitionist Papers*, ed. C. Peter Ripley (Chapel Hill: University of North Carolina Press, 1991), vol. 3, 52.

[351] *A Report of the Record Commissioners of the City of Boston, containing the Boston Records from 1729 to 1742* (Boston: Rockwell and Churchill, 1885), June 18, 1740.

future." For Woodby, it apparently was enough to make it clear he knew the law and that he would not stand for unlawful treatment.

African Americans had probably never entrusted the law or legal authorities with total confidence. To varying degrees, they had probably always kept a "top eye open." But there had been substantial reliance on the law as a tool to mediate differences with other blacks as well as with whites, and to provide a foundation for African Americans to define themselves as citizens. During the 1850s, however, African Americans could no longer go to the law with any assurance. Gone were the days when black Bostonians could approach the neighborhood constable as they had approached George Reed in the 1810s. Gone were the days of the police working with black men like Richard Crafus in what was probably a guarded but mutually beneficial relationship.

This dissertation has described black engagement with the law in Boston that fostered a legal consciousness over a stretch of two hundred years. That particular legal consciousness may have begun to change toward the end of the antebellum era. Even then, however, the legal arena was a scene of victories and defeats. Locally, ordinary African Americans no doubt continued to use legal beliefs, both inside and outside the formal legal system, in a variety of ways, with varying effectiveness. Nationally, African Americans experienced setbacks with the passage of the Fugitive Slave Act in 1850 and the Dred Scott decision in 1857. Black Bostonians experienced the ability of the law to protect when three courts exonerated three leaders of the black community for assisting in the successful rescue of Shadrach Minkins, an fugitive slave who had been captured for an imminent return to slavery in 1851. The black leaders, James Scott, Lewis Hayden, and Robert Morris, had almost surely participated in the rescue, but their defense attorneys managed

to convince enough members of the white juries to prevent convictions of Scott and Hayden, and a unanimous vote for Morris' acquittal. For these men, the law worked to overcome an unjust law. But just a few months later, black Bostonians would witness the triumph of injustice when Thomas Sims, only seventeen years old, was apprehended and all efforts to free him failed. City policemen had told Sims he was accused of theft, a charge that Sims, knowing he was innocent, had been confident of beating in court. Only after he was in custody was he told that he had been captured as a fugitive slave. This incident likely prompted the Vigilance Committee posters that appeared a few weeks later. Three years later, black Bostonians would watch another fugitive slave, Anthony Burns, marched through the streets of Boston by federal troops and returned to slavery. As African Americans had always known, the law could be a powerful tool for both freedom and oppression. On the eve of the Civil War, the oppressive power of the law seemed to be on the verge of becoming overwhelming.[352]

It is through the lens of the oppressive power of the law that African Americans' interaction with the law is frequently seen. The legal consciousness of most African Americans in the late nineteenth century and into the twentieth century is probably best typified by a joke that circulated in the Depression-era South. Two black men walking down a country road are hit by a white man speeding along in a big white convertible. The first man is propelled 150 feet down the road. The second is launched straight up in the air and lands in the convertible. When the police arrive on the scene, the first black man is charged with leaving the scene of an accident, and the

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[352] On Shadrach Minkins, see Gary Collison, *Shadrach Minkins: From Fugitive Slave to Citizen* (Cambridge: Harvard University Press, 1997); on Thomas Sims, see James Oliver Horton and Lois E. Horton, *Black Bostonians: Family Life and Community Struggle in the Antebellum North* (Holmes and Meier, 1979), 105-107.

second black man is charged with illegal entry.[353] Expecting justice in a racist white world was futile. The legal consciousness of many African Americans, especially in the south during the middle of the twentieth century, reinforced avoidance of the law. But it was not always so. The story in these pages is of the more complicated story of the relationship between African Americans and the law in Massachusetts over the two hundred years before the Civil War.

Part of that story is how that relationship shaped black identity. In contrast to the joke's two black victims, African Americans in colonial America and during the early republic era were not simply acted upon by the law. They responded actively to their changing circumstances by using the law. Historians Susan Juster and Lisa MacFarlane note that "our identities also derive from our active responses to our changing needs and desires, responses which in turn serve to reconstruct the categories into which we are placed."[354] When Adam Saffin achieved freedom through the courts in 1703, he managed to reconstruct himself as a free man. When black integrationists sought to close the Smith School, they attempted to define what it meant to be black and American as citizens who actively pursued full citizenship rights. African American identity, never static, was in many ways a contested identity as black women and men wrestled with whites and one another in many arenas. The law was one of few arenas in which African Americans could hold some expectation that the playing field might be level.

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[353] Lawrence W. Levine, *Black Culture and Black Consciousness: Afro-American Folk Thought from Slavery to Freedom* (New York: Oxford University Press, 1977), 318-319.

[354] *A Mighty Baptism: Race, Gender, and the Creation of American Protestantism*, ed. Susan Juster and Lisa MacFarlane (Ithaca: Cornell University Press, 1996), 3.

The real but elusive opportunities for change after the end of the Civil War likely further encouraged the kind of legal consciousness described here. The thirteenth, fourteenth, and fifteenth Amendments "were fundamental expressions of the black community's struggle, vision, and hope." In the early years of Reconstruction, black men made inroads into political institutions, giving African Americans hope that legal equality might eventually translate into political and economic equality. Eric Foner describes the development of a rights consciousness among southern blacks that was connected to the Declaration of Independence, and African Americans' interpretation of the postwar amendments as defining a "new national citizenship."[355]

But for many African Americans hope waned in the latter years of Reconstruction before being crushed in the era white restoration.[356] Though there may have been a retreat from the law and the development of a different kind of legal consciousness among ordinary black folk -- one that taught them to avoid the formal legal system law when possible, and to be exceedingly wary when engaged with it -- African Americans probably continued to use legal beliefs privately in a variety of ways. Black leaders certainly continued to employ legal beliefs about the Constitution and the 'rights that belong to us all.' The ongoing employment of legal beliefs would also continue to generate tensions within the black community; in the twentieth century friction at times stemmed

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[355] Vincent Harding, "Wrestling toward the Dawn: The Afro-American Freedom Movement and the Changing Constitution," *Journal of American History* 74 (December,1987), 724; Eric Foner, "Rights and the Constitution in Black Life during the Civil War and Reconstruction," *Journal of American History* 74 (December,1987), 880.

[356] See Joel Williamson, *A Rage for Order: Black/White Relations in the South Since Emancipation* (New York: Oxford University Press, 1986); Eric Foner, *A Short History of Reconstruction, 1863-1877* (New York: Harper and Row, 1990); Edward L. Ayers, *The Promise of the New South: Life After Reconstruction* (New York: Oxford University Press, 1992); C. Vann Woodward, *The Strange Career of Jim Crow*, 3d rev. ed. (New York: Oxford University Press, 1974).

from the recalcitrance of ordinary black folk, many of them older, to buck an entrenched system of segregation. Those tensions were nothing new. African Americans in the twentieth century, as they had in earlier times, continued to work out what it meant to black and American.

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