

# MY ISAAC ROYALL LEGACY

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Janet Halley\*

*Note to the reader: What follows is a revised version of remarks I delivered on Monday, September 17, 2006 in the Casperson Room at Harvard Law School, at the time of my appointment to the Royall Chair of Law. The portrait of the donor, Isaac Royall, reproduced here as Plate 1 and discussed below, was behind the lectern. I am very grateful to the Harvard BlackLetter Law Journal for publishing this essay.*



Plate 1: Isaac Royall and his Family. Oil on canvas, 56 <sup>3</sup>/<sub>16</sub>" × 77 <sup>3</sup>/<sub>4</sub>". Painted by Robert Feke (1705-1750), 1741. Given to Harvard College in 1879 by Dr. George Stevens Jones. Courtesy of Special Collections Department, Harvard Law School Library.

It has been a great honor to me to be appointed the next Royall Chair here at Harvard Law School and I want to extend the deepest gratitude to Dean Kagan for this event in my life. It is a particularly daunting honor because I succeed so many distinguished Royall Chairs. This seems like an opportune moment to remember their names, from the first to the most recent: Isaac Parker, John Hooker Ashmun, Simon Greenleaf, Wil-

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liam Kent, Joel Parker, Nathaniel Holmes, James Bradley Thayer, John Chipman Gray, Joseph Henry Beale, Edmund Morris Morgan, John MacArthur Maguire, Paul Abraham Freund, Archibald Cox, Benjamin Kaplan, Vern Countryman, Robert Charles Clark and David Richard Herwitz.<sup>1</sup> This is a roll call of immense distinction.

But there are some aspects of stepping into this position that are more strenuous, and I want to use this inaugural moment to reflect on them. I want to think hard about Isaac Royall, Jr., the founder of my chair. And before turning to this task, I want to thank Daniel Coquillette, Lester Kessel Visiting Professor of Law at HLS, and Elizabeth Kamali, our recent graduate, who have researched Isaac Royall's life and the early history of the Law School and who have been unstintingly generous to me in providing their counsel and their beautiful files of materials, both primary and secondary. Throughout our discussions, the precision and scholarly wisdom of Elizabeth's work showed me a powerful new legal historian in the making. I also want to thank Betsy Henthorne, David Warrington and Melinda Spitzer Johnston for providing extremely valuable information from the Law School's archives. Especially because I have had such wonderful help, I hasten to add that all errors of fact and judgment are mine alone.

In Plate 1 to this essay, you see Isaac Royall, the donor of the professorship I now hold, in a portrait made by Robert Feke in 1741. At this time Isaac Royall was 22 years old and settled in what is now Medford, Massachusetts.<sup>2</sup> He had come with his father and family from Popeshead, Antigua just four years before.<sup>3</sup> His father had died only two years after their move, in 1739<sup>4</sup>; our Isaac Royall was now the head of his household. He stands and the women sit: from our right to left, they are his wife (holding their daughter), his wife's sister and his sister.<sup>5</sup> They are all magnificently turned out; the "turkey carpet" on the table before them – I'm

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1. HARVARD LAW SCHOOL FACULTY, 2007-2008, at 80 (Harvard Law School Communications 2007).
  2. Alexandra A. Chan, *The Slaves of Colonial New England: Discourses of Colonialism and Identity at the Isaac Royall House, Medford, Massachusetts, 1735-1755*, at 254 (2003) (unpublished Ph.D. dissertation, Boston University) (on file with the Harvard Law School Library).
  3. *Id.* at 75.
  4. *Id.* at 78.
  5. These identifications are inscribed on the back of the canvas, presumably by Feke himself, under the title "The Family of Isaac Royall." GLADYS N. HOOVER, *THE ELEGANT ROYALLS OF COLONIAL NEW ENGLAND* 40-41 (1974). Chan identifies the child as Isaac and Elizabeth Royall's first daughter, Chan, *supra* note 2, at 254, but Alan Burroughs indicates that X-ray shadowgraphs of the portrait indicate not only that Feke repainted the portrait of one of the women a few inches to the left of its original location, but that the infant portrait was scraped out and repainted by another hand, probably, he concludes, that of John Greenwood, at a still later date. ALAN BURROUGHS, *LIMNERS AND LIKENESSES: THREE CENTURIES OF AMERICAN PAINTING* 45 (1936) (shift in location of a lady's portrait); *id.* at 59 n.42 (repainting of infant portrait and its implications); *id.* at 41 (Greenwood's first name). Burroughs speculates that the infant portrayed in the final state of the canvas was a second Elizabeth, born in October, 1747 and given her deceased sister's name. *Id.* at 59 n.42. It was common at that time to "repeat" a highly valued first name when its first holder died in infancy or childhood.

using the words from the list of items "In the Best Room" on the inventory of his father's estate; obviously this carpet was an object of considerable pride<sup>6</sup> – is on prominent display not only for its beauty but to blazon its value and its owners' taste. This is a family that acquires beautiful exotic objects from the Orient.

Isaac Royall holds a book in his hand: gentle letters are his avocation, we surmise.

The posture of the subjects is also indicative. Much later John Singleton Copley was commissioned to paint matched portraits of Isaac and Elizabeth Royall in the style of the great bourgeois marital portraits of Rembrandt and Holbein.<sup>7</sup> The iconography of such portrait pairs emphasizes the individuality and equality of husband and wife. But here, Isaac Royall points to the women and infant, his dependents, while the wife, infant and sister-in-law all point to the sister. As a result, the two most prominent figures are Isaac, Jr. and his sister. In the Feke portrait of "The Family of Isaac Royall," the patriarchal family decisively trumps companionate marriage.<sup>8</sup>

Distinguished acquisition, gentlemanly occupation, patriarchal familial organization: retro aristocratic imagery clads a young scion of the rising bourgeois class. There is no indication here of the hard work of making money, no indication of the many recent family calamities (their flight from Antigua;<sup>9</sup> the death of his father), no indication of the family's deployment of slave labor in the making of its wealth. I'm not sure what to make of the murky scenery glimpsed through the curtains; we might read it as an ominous portent, but it is unimaginable that Isaac Royall did.

As Dean Kagan indicated in her introduction to my remarks, the Royall family owned slaves, first in Antigua and then here in Massachusetts. We know from tax records that, six months after arriving in Medford, Isaac, Sr. imported 15 of his Antigua slaves to Massachusetts.<sup>10</sup> Inventories of Isaac, Sr.'s estate made in 1739 and, retrospectively, in 1759, list nineteen slaves as his property.<sup>11</sup> Indeed, according to the fascinating dissertation on New England slavery by Alexandra A. Chan, the Royall household in Medford, Massachusetts had six times more slaves than any other household in the town – 12 in all in 1754.<sup>12</sup> These slaves are intrinsically bound, if you will, to the grant that established the Royall Chair. Here is how.

While in Antigua, Isaac Royall, Sr., our Isaac Royall's father, was involved in the Triangle Trade, actively investing in slaving voyages, exporting sugar, and manufacturing rum.<sup>13</sup> His biggest slaving year was

6. Chan, *supra* note 2, at 409-14 (1739 inventory of Royall house).

7. HOOVER, *supra* note 5, at 63-65.

8. *Id.* at 40-41.

9. Chan, *supra* note 2, at 75.

10. *Id.* at 75.

11. *Id.* at 413-15.

12. In 1754 the Royall household in Medford included 12 slaves; the next largest slave-holding households were two neighboring families, each owning two slaves; 18 households had one slave. *Id.* at 127.

13. *Id.* at 63-67.

1734, when his accounts show that he sold 121 slaves and more than 20 pounds of sugar.<sup>14</sup> By 1737, however, life in Antigua had become far too risky for him: years of drought, epidemics of infectious disease, and the revelation of a carefully planned Nat Turner-style slave revolt just hours before it was (supposed) to have begun are enough to explain the date of his departure to Massachusetts. Isaac Royall, Jr. was 18 years old and present in Antigua when the slave revolt was foiled. He would have been vividly aware that his family's own overseer, Hector, was burned alive in punishment for his role in the alleged conspiracy.<sup>15</sup> Many of the other participants (or accused participants) – including Quaco, another Royall slave – were exiled<sup>16</sup>; we can infer that Hector was thought to have played an active role in the conspiracy. The Antiguan assets of the Royall family thus included human capital in the most dreadful possible sense of the term.

The wealth that allowed the Royall family to acquire their Massachusetts holdings thus derived from a slave-based enterprise. Not only did the family retain its Antiguan plantations, earning from them 300 pounds a year before the Revolution, but it also acquired from its proceeds the Medford estate – dubbed Royallville in Isaac Royall, Jr.'s will – and substantial land in western Massachusetts as well, including an estate at what is still called Royalton.<sup>17</sup> It seems fair to conclude that the root of all this wealth was planted when Isaac Royall, Sr. decided to participate in the Triangle Trade and that the maintenance and expansion of this wealth during Isaac Royall, Jr.'s lifetime were intrinsically tied to the family's decision to engage in slaveholding on a scale unknown to neighboring households.

The Royall Chair is, in turn, at the root of the decision to *have* a Law School here at Harvard. Isaac Royall, Jr. stipulated in his will that 200 acres of his Royalton estate, plus any not-otherwise-bequeathed lands in Royalton, were to be sold to fund a professorship at Harvard College in Physic and Anatomy or Law – “whichever the Overseers and Corporation of said College shall chuse or judge to be best for the benefit of said College.”<sup>18</sup> He died in 1781.<sup>19</sup> When Harvard finally noticed in 1795 that it had this claim, and when it was finally able to clear title, sell the Royalton estate and apparently also some holdings in Granby, and assess its funds — which did not happen until 1815<sup>20</sup> — it also decided to go for the Chair

14. *Id.* at 66 tbl.3.2.

15. *Id.* at 73.

16. *Id.* at 73-74.

17. Colin Nicolson & Stuart Scott, *A 'Great National Calamity': Sir William Pepperrell and Isaac Royall, Reluctant Loyalists*, 28 *HIST. J. OF MASS.* 117, 122 (2000).

18. Will & Codicils [sic] of Isaac Royall, Item 6th (May 26, 1778) (on file with the Harvard Law School Library).

19. Chan, *supra* note 2, at 81.

20. It was the Royalton holdings and possibly some other holdings in western Massachusetts that became the source of the funds used to establish the first Royall Professorship. It is often stated that this bequest was of 2000 acres of land and included additional holdings in Granby. See, e.g., e-mail from Betsy Henthorne, Events and Faculty Recruitment Coordinator, Harvard Law School Office of the Dean, to author (Aug. 20, 2007, 09:30 EST) (forwarding information provided by the Harvard Law School Development Office) (on file with the Harvard Law School Library). The

in Law.<sup>21</sup> This was the first such appointment at Harvard, and the first holder of the Royall Chair, Isaac Parker, used his inaugural lecture to propose that the time was ripe for the establishment of a law school.<sup>22</sup> It was in commemoration of this grant that Pierre de Chaignon la Rose designed the Law School's official arms.<sup>23</sup> He derived the three sheaves of wheat that mark the Law School's arms directly from the Royall family coat of arms.<sup>24</sup>

This is the legacy of my chair, and why the title of my original remarks began "My Chair . . . and Your Chair." Speaking to an almost exclusively Harvard Law School audience, I wanted to make the point that Isaac Royall's legacy, including as it did the fruit of the labor and actual sale of slaves, belongs to all of us who benefit from the existence of this institution.<sup>25</sup>

Let's consider what that might mean to us. I'm going to approach that by thinking about Royall himself, and then his legacies.

As I've indicated, Isaac Royall, Jr. inherited his father's estate just two years after the family had moved to Massachusetts. By that time the beautiful house in Medford had been built.<sup>26</sup> The new head of the family was among the most wealthy – and conspicuously wealthy – young men in the colony. And he was intensely involved in public life. He was at various times moderator of the Medford Town Meeting, chair of the selectmen in Charlestown and Medford, Justice of the Peace for Suffolk County, deputy to the General Court of Boston, and member of the Governor's Council.<sup>27</sup> With his son-in-law Sir William Pepperrell, he was one of the most active members of a mediating group self-named "friends of government" who, in the run-up to the Revolutionary War, sought to soften British policy in the colonies and to dampen the factions seeking a rupture with England.<sup>28</sup> He was also a generous man: he was famous for

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2000 acres figure would be correct if the residual estate turned out to be quite large. The intricacies of the College's lengthy efforts to cash out the bequest amidst the confusions about title that necessarily followed the post-revolutionary Confiscation Act are beyond the scope of this essay. Two things I can affirm: the will itself clearly says "two hundred acres" and speaks only of Roylton.

21. CHARLES WARREN, *HISTORY OF THE HARVARD LAW SCHOOL AND OF EARLY LEGAL EDUCATION IN AMERICA* 282-90 (1908).
22. See *id.* at 299-302 for excerpts from Parker's inaugural address.
23. Mason Hammond, *Harvard Armory: Part I*, 29 *HARVARD LIBRARY BULLETIN* 261, 263-66 (1981).
24. *Id.* at 284-85; see also *A Royall Find*, *HARVARD LAW BULLETIN* (Summer 2001), available at [http://www.law.harvard.edu/news/bulletin/2001/summer/gallery\\_main.html](http://www.law.harvard.edu/news/bulletin/2001/summer/gallery_main.html) (last visited Mar. 20, 2008); Joo-Hee Chung, *Harvard Explained: What are the meaning [sic] of the house and graduate school shields?*, *HARVARD CRIMSON MAGAZINE* (Nov. 1, 2001), available at <http://www.thecrimson.com/article.aspx?ref=122037> (last visited Mar. 20, 2008); *Our History*, *HARVARD LAW SCHOOL*, <http://www.law.harvard.edu/about/history.php> (last visited Mar. 20, 2008).
25. Of course, if you have only been *harmed* by Harvard Law School – and without doubt many people stand in that position – you are innocent of this problematic legacy, hence the change in my title.
26. Chan, *supra* note 2, at 80.
27. See *id.*; Nicolson & Scott, *supra* note 17, at 122-24.
28. Nicolson & Scott, *supra* note 17, at 119, 130-31, 141.

his sumptuous hospitality and made many public gifts, both living and testamentary, especially to support education.<sup>29</sup>

On the day of the Battle of Lexington, Royall – unable to return from Boston to Medford because the city was cordoned off – abruptly fled to Halifax (in Nova Scotia) and then to England.<sup>30</sup> Given what was to follow, his decision to flee seems not improvident: he was to be castigated as a loyalist but never officially listed as one; his estate was to be confiscated but not sold<sup>31</sup> (Pepperrell and George Erving, husband of Isaac Royall's older surviving daughter Mary,<sup>32</sup> both thought by the patriots to be more hard-line royalists than Isaac Royall, did lose their estates<sup>33</sup>). While in Halifax, our Isaac Royall attempted to raise what must have been urgently needed funds. Here are his instructions to his agent in Massachusetts, Simon Tufts:<sup>34</sup>

Please to sell the following negroes: Stephen and George; they each cost £60 sterling; and I would take £50, or even £15, apiece for them. Hagar cost £35 sterling; but I will take £30 for her. I gave for Mira £35, but will take £25. If Mr. Benjamin Hall will give the \$100 for her which he offered, he may have her, it being a good place. As to Betsey, and her daughter Nancy, the former may tarry, or take her freedom, as she may choose; and Nancy you may put out to some good family by the year.<sup>35</sup>

We can surmise from this that Stephen and George were old or infirm but still able to work and that Betsey had no market value. Royall may have preferred that Betsey elect her freedom – and Chan indicates that she did so<sup>36</sup> – but at least he made no attempt to avoid his duty to support her. Less generously, he directed that her daughter Nancy should be hired out to another master, providing for a mother/daughter separation that the Royalls in better times had avoided.<sup>37</sup> His hope to find a “good place” for Mira was contingent on his extracting at least some of his investment in her. Most grim, perhaps, is this indication of the slaves' own attitudes to

29. Chan, *supra* note 2, at 80-81; Will, *supra* note 18, Item 12th; E-mail from Betsy Henthorne, *supra* note 20 (indicating that Isaac, Jr. “subscribed £55 (making him one of the largest donors) and gave a number of books to help repair the loss of the library and the scientific laboratory in the Harvard Hall fire in 1764”).

30. Chan, *supra* note 2, at 81.

31. CHARLES BROOKS, HISTORY OF THE TOWN OF MEDFORD, MIDDLESEX COUNTY, MASSACHUSETTS 152-54 (James M. Usher ed., Boston, Rand, Avery & Co. 1885).

32. HOOVER, *supra* note 5, at 70.

33. BROOKS, *supra* note 31, at 152. *But see* Nicolson & Scott, *supra* note 17, at 141 (concluding that the Royall estate was never able to recover the Medford property, in part because son-in-law Erving was proscribed by the Conspiracy Act). According to Nicolson & Scott, Pepperrell and Royall were listed in the Confiscation Act of April 20, 1779, which slated their property for confiscation; and Pepperrell and Erving (but not Royall) were named in the Conspiracy Act of 1779, which deprived them of Massachusetts citizenship. *Id.* at 135-36, 141.

34. Chan, *supra* note 2, at 308.

35. BROOKS, *supra* note 31, at 147.

36. Chan, *supra* note 2, at 307.

37. *Id.* at 285.

the consequences of their master's exile: George had already frustrated his owner's plans, having slit his own throat the day before.<sup>38</sup>

Chan has been able to verify that, between 1737 and 1778, Isaac Royall and his father owned at least 60 and as many as 63 human beings.<sup>39</sup> She concludes that the structure now known as the Royall Slave Quarters did indeed house some of them; others may have lived in the main house<sup>40</sup> (one man was named "House Peter,"<sup>41</sup> doubtless to distinguish him from another Peter); possibly some lived and labored on the land in Royalton that was sold to establish the fund for my Chair. It's important to keep in mind, moreover, that, except for his wealth and the size of his slave holdings, he was entirely typical of his class. White people of means owned slaves; they saw slaves wherever they went. With very few (mostly Quaker) exceptions, they attached no stigma to the ownership of, even to the trade in, slaves. Slavery was constitutive of colonial economic life. Brown University has done a fascinating study of the deep enmeshment of the entire Rhode Island colonial economy in slavery – an enmeshment that continued via the slave trade long after the new state abolished slavery within its own borders.<sup>42</sup> And Chan's dissertation goes a long way towards telling a similar story about Massachusetts.<sup>43</sup>

Much scholarly debate has focused on just how bad New England slavery was. As Chan makes clear, it was far more likely that a Massachusetts slave would be skilled in trades of the evolving marketplace than that a Deep South slave would.<sup>44</sup> Did this mean that they had more bargaining power and more room for slivers of self-determination – or that the absolute injury of enslavement merely took a particular form in the North, locking its victims into status in a world gradually progressing to contract and thus presenting them with ever-new forms of insult and incapacitation? Massachusetts slaves lived in far closer proximity to whites and were sprinkled around the social geography in far lower concentrations than was typical of plantation society. Did this mean that they enjoyed far better housing, clothing, and food, that they reaped the benefits of social inclusion – or that they were more isolated, outnumbered, parentless, partnerless, childless, defenseless?

Much of the scholarship that I read in my effort to come to terms with New England slavery, and American slavery generally, treats these dual images as orthogonal: when faced with these either/or possibilities, you have to pick. Chan, for instance, is quite indignant at any suggestion that Isaac Royall's Massachusetts was merely a "society with slaves"<sup>45</sup>: if we

38. *Id.* at 308.

39. *Id.* at 284–85 tbl.7.1. Chan counts 63 in all, *id.* at 286, but her chart shows fewer names.

40. *Id.* at 95–99, 226–27.

41. *Id.* at 284.

42. BROWN UNIVERSITY, STEERING COMMITTEE, SLAVERY AND JUSTICE: REPORT OF THE BROWN UNIVERSITY STEERING COMMITTEE ON SLAVERY AND JUSTICE 7–31 (2006), available at [http://www.brown.edu/Research/Slavery\\_Justice/](http://www.brown.edu/Research/Slavery_Justice/).

43. See generally Chan, *supra* note 2.

44. On the economics of Northern as opposed to "large plantation contexts" of slavery, see Chan, *supra* note 2, at 101–05, 109–10, 111–12, 115–20.

45. Chan, *supra* note 2, at 114.

are to recognize the brutal fact that slavery was the “cornerstone for the economic prosperity of the North throughout the 18th and even 19th centuries,”<sup>46</sup> we must call it a “slave society.”<sup>47</sup> When Eugene Genovese imported Gramsci’s theory of hegemony to describe American slavery (and thus gave slaves *roles* in the production of slave culture),<sup>48</sup> the question became: did he violate an obligation to be absolute in his moral condemnation of slavery or did he (only partially) fulfill an obligation to respect the humanity and “agency” of slaves?<sup>49</sup> The description of slave existence becomes a moral calling, driven by strong mutually exclusive demands to describe so as to condemn slavery because it was an absolute domination, and to describe it so as to recognize the slaves as human beings inevitably animated by the spirit of resistance.

Somehow, reading these debates as I struggle to come to terms with my Royall Chair legacy, I find these polarities . . . a little . . . unhelpful. The fact that the very location of the roads in Cambridge, the beautiful design of the old houses, the wealth of the region were all determined in the matrix of the mass enslavement of seized Africans and their offspring – the fact that the funds that established the Royall Chair derived, directly and/or indirectly, from the sale of human beings and the appropriation of their labor – these are facts. What does one *do* about them? Thinking in binarized terms of condemnation and redemption just doesn’t seem to capture the complexity of this question.

Consider, for example, some further sequels of Isaac Royall’s life – some of his legacies. In his will he gave his slave Belinda the option of freedom, and he further “provided that she get security that she shall not be a charge in the town of Medford.”<sup>50</sup> If she did not elect freedom, he bequeathed her to his daughter Mary Erving.<sup>51</sup> Other slaves were bequeathed and some were sold, but Belinda was emancipated. The estate did not, as it happened, cough up her maintenance, and she had to sue repeatedly for her annual 15 pounds.<sup>52</sup>

The astonishing petition arguing her first lawsuit is rhetorically rich — direct literary evidence of an elaborate and well-worked out black argument for abolition. Roy E. Finkenbine very plausibly argues that this document was probably written by Prince Hall, a freedman who was a vigorous leader of the black community in Boston.<sup>53</sup> The petition gives

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46. *Id.* at 115.

47. *Id.* at 114.

48. See EUGENE D. GENOVESE, *ROLL, JORDAN ROLL: THE WORLD THE SLAVES MADE* (Vintage Books 1974).

49. For a discussion of this unfortunate turn in the reception of *ROLL, JORDAN ROLL: THE WORLD THE SLAVES MADE*, see WALTER JOHNSON, *A Nettlesome Classic Turns Twenty-Five*, *COMMON-PLACE*, July 2001, <http://www.common-place.org/vol-01/no-04/reviews/johnson.shtml> (last visited Mar. 8, 2008).

50. See Will, *supra* note 18, Item 5th.

51. *Id.*

52. For transcripts of Belinda’s 1783 and 1787 petitions and a 1787 Resolve of the Massachusetts House of Representatives granting her pension from the state Treasury, see Chan, *supra* note 2, at 446-78 app. B.

53. Roy E. Finkenbine, *Belinda’s Petition: Reparations for Slavery in Revolutionary Massachusetts*, 64 *WM. & MARY Q.* 95, 101-02 (2007). Finkenbine’s case is made just a little bit stronger by the fact that Belinda’s 1787 petition was signed by Willis Hall and



florid expression to the golden age of Belinda's African past, the utter pathos of her enslavement and crossing to America, and the injustice of her current need. Here, as in a series of petitions to the Massachusetts legislature which we *can* positively ascribe to Hall,<sup>54</sup> we see white Revolutionary rhetoric about freedom turned back hard against black slavery and the Revolutionary elites who maintained it: "Fifty years her faithful hands have been compelled to ignoble servitude, for the benefit of an ISAAC ROYALL"<sup>55</sup> – note that our benefactor's name appears in caps, deployed to stigmatize him as a royalist — "until, as if nations must be agitated, and the world convulsed, for the preservation of that freedom which the Almighty Father intended for all the human race, the present war commenced."<sup>56</sup> She appealed for relief "to a body of men, formed for the extirpation of vassalage[.]"<sup>57</sup> It must have stunned the revolutionary generation to see their own rhetoric of victimization and emancipation turned so swiftly and so answerlessly against them.

In the same year, faced with the question whether Quock Walker was free or a slave (and thus whether Nathaniel Jennison, who claimed to own him, had committed assault and battery in seizing him and forcing him to return to his house), Chief Justice William Cushing of the Massachusetts Supreme Judicial Court adopted the argument that the principles of the Revolution, as inscribed in the state constitution, would require abolition. He instructed the jury:

[W]hatever usages formerly prevailed or slid in upon us by the example of others on the subject, they can no longer exist. Sentiments more favorable to the natural rights of mankind, and to that innate desire for liberty which heaven, without regard to complexion or shape, has planted in the human breast—have prevailed since the glorious struggle for our rights began. And these sentiments led the framers of our constitution of government—by which the people of this commonwealth have solemnly bound themselves to each other—to declare—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 his life and property. In short, without resorting to implication in constructing the constitution, slavery is in my judgment as effectively abolished as it can be by the granting of rights and privileges wholly incompatible and repugnant to its existence. The court are therefore fully of the opinion that perpetual servitude can no longer be tolerated in our government, and that liberty can only be forfeited by some criminal conduct or relinquished by personal consent or contract.<sup>58</sup>

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Nath Hall serving as witnesses. See Chan, *supra* note 2, at 447 app. B. The fact that these two Halls – in the small freed black community of Boston – shared Prince Hall's last name suggests that they may have been related to him and thus that he may have written the petition.

54. Finkenbine, *supra* note 53, at 101.

55. *The Petition of BELINDA, an African*, 6 N.J. GAZETTE, June 18, 1783, at 1.

56. *Id.*

57. *Id.*

58. See A. LEON HIGGINBOTHAM, *IN THE MATTER OF COLOR: RACE AND THE AMERICAN LEGAL PROCESS: THE COLONIAL PERIOD 94-95* (Oxford University Press 1978) (quot-

That seems pretty decisive – and Cushing’s decision is often cited as the exact moment of abolition in Massachusetts. But in private papers Justice Cushing stated the proviso in the last sentence just quoted more capaciously: “I think . . . there can be no such thing as perpetual servitude of a rational creature, *unless* his liberty is forfeited by some criminal conduct or given up by personal consent or contract.”<sup>59</sup> It’s unclear whether Cushing wanted merely to acknowledge the continuing legitimacy of indentured servitude or to preserve also the legitimacy of perpetual slavery as a punishment for crime. And as A. Leon Higginbotham reminds us, the actual legal effect of the *Quock Walker* verdict was not to abolish slavery in the state but merely to convict Jennison: other prominent revolutionaries continued to regard the constitution’s failure to abolish slavery explicitly as an implicit accommodation of black enslavement to white liberty.<sup>60</sup> Higginbotham demonstrates that litigators and courts continued to equivocate until the 1830s over whether Massachusetts had a place in its legal system for enslavement; Emily Blanck provides ample additional evidence that abolition in Massachusetts was gradual, as much a matter of public opinion and local practice as of the legal wrangling and inconsistent outcomes in particular cases.<sup>61</sup> Indeed, it could hardly be otherwise as long as any incidents of slavery legally valid in positive law elsewhere could be recognized in Massachusetts.

Of course the Brown Report is right that even explicit in-state abolition did not disentangle the northeastern economy from the slave trade – but the decided trend in that direction, in Massachusetts and elsewhere in the northeast, does make our Royall legacy more complex. Two 19th century sequels add to the complexity. The name of Forton Howard, probably an emancipated slave of Isaac Royall, Jr., appears on the 1778 charter membership list of the Prince Hall Masonic Lodge in Boston.<sup>62</sup> Howard’s grandson Peter Malcolm Howard could be found living in Cambridgeport in the 1830s; he played the clarinet and participated in a concert including the “Overture to the Marriage of Figaro” at the African

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ing “a manuscript notebook in the Harvard University Law Library entitled ‘Notes of Cases decided in the Superior and Supreme Judicial Courts of Massachusetts from 1772-1798 taken by the Honorable Wm. Cushing, one of the Judges during that period and most of the time Chief Justice.’” See *id.* at 420 n.127). Higginbotham refers us to John D. Cushing, *The Cushing Court and the Abolition of Slavery in Massachusetts: More Notes on the Quock Walker*, 5 AM. J. LEGAL HIST. 118, 132-33 (1961) for another transcript of this passage.

59. WILLIAM CUSHING, NOTES ON LAW CASES, 1783 (Massachusetts Historical Society 1992). This is a photocopy of Cushing’s own manuscript in the MHS holdings. See HIGGINBOTHAM, *supra* note 58, at 420-21 n.127, for a transcript. John D. Cushing argues, very plausibly, that this manuscript is Cushing’s rough draft of his final jury instruction. CUSHING, *supra* note 59, at 132 n.20. If that is right, then his later ruling from the bench manifests a stronger, less equivocal, abolitionist stance.
60. HIGGINBOTHAM, *supra* note 58, at 92-99.
61. Emily Blanck, *Seventeen Eighty-Three: The Turning Point in the Law of Slavery and Freedom in Massachusetts*, 75 NEW ENG. Q. 24, 49 (2002).
62. FRANKLIN A. DORMAN, TWENTY FAMILIES OF COLOR IN MASSACHUSETTS, 1742-1998, at 143 (New England Historic Genealogical Society 1998). I am grateful to the Royall House and Slave Quarters website for drawing my attention to this source, at <http://royallhouse.org/geneology.php> (last visited Mar. 20, 2008).



Plate 2: A Portrait of Harriet Tubman. Photographer: Ernsberger.

Baptist Church; and he owned a barbershop “at the foot of Beacon Hill, [which] was a meeting place for antislavery forces and a station of the Underground Railroad.”<sup>63</sup> He might have actually known Harriet Tubman, whose fierce face appears as Plate 2, and who ran the Underground Railroad with wonderful belligerence. Indeed, Forton Howard’s great-grandson Peter James Howard fought in the Fifth Cavalry in the Civil War.<sup>64</sup> Does the Royall legacy include this emergence of a warlike dedication to complete abolition? It would be invigorating to see in Forton How-

63. DORMAN, *supra* note 62, at 146-47.

64. *Id.* at 148.

ard's activism and (if we are not pacifists) in Peter James Howard's military service their participation in the life-affirming counter tradition of freedmen's resistance to slavery – one longs to see it, not in a glass darkly but face to face – a chain of mutual aid running all the way back to Belinda's indignant petition – and, running forward again, a Royall legacy that embraces the struggle for emancipation.

And what about the Law School? This is not the time for a detailed documentation of its early history. But you can see from Isaac Parker's 1816 inaugural address calling for the establishment of a law school,<sup>65</sup> from the minutes of the Harvard Corporation setting out the scope and design of the new Professorship and, later, the School, and from the successive Statutes establishing my Chair and defining and redefining its duties, that a tremendous labor of legal innovation was implied in the founding of the Royall Chair.<sup>66</sup> The very *idea* of a Law School in a College

65. WARREN, *supra* note 21, at 299-302.

66. Thanks to Elizabeth Kamali, I have photocopies of the following: Minutes from Meeting of the President and Fellows of Harvard C. (Sept. 4, 1814) (recording the decision to establish a Royall Professorship of Law and to appoint Isaac Parker to the post) (on file with the Harvard Law School Library); Letter of J(ohn) T(hornton) Kirkland (Sept. 14, 1815) (reporting on a meeting of the President and Fellows of Harvard College in which it was decided to appoint John Lowell to the Royall Chair) (on file with the Harvard Law School Library); Minutes from Meeting of the President and Fellows of Harvard C. (Oct. 11, 1815) (on file with the Harvard Law School Library); Minutes from Meeting of the President and Fellows of Harvard College (Oct. 11, 1815) (setting out, in seven statutes, the duties and rights of the Royall Professor, including particularly the obligation to give a series of 15 lectures and to "exhibit" in them "the theory of Law in its most comprehensive sense" and to address an ample list of topics) (on file with the Harvard Law School Library); John Thornton Kirkland, Inauguration of the Royall Professor of Law the Hon. Chief Justice Parker (Apr. 17, 1816) (recording the Latin address of the College President on this occasion) (on file with the Harvard Law School Library); Letter from Isaac Parker (Apr. 17, 1816) (repeating the Statutes adopted in October of the previous year and concluding with Parker's oath to fulfill his duties under them) (on file with the Harvard Law School Library); Letter from Isaac Parker (May 14, 1817) (stating Parker's proposal to establish a school granting a bachelor's degree in law, to appoint a second professor in the new school who would be responsible for developing a "course of study" in law; proposing also that Parker himself should be responsible to "bestow as much of his time upon the school as can be spared from his other public duties") (on file with the Harvard Law School Library); Minutes from the Meeting of the President and Fellows of Harvard C. (May 14, 1817) (adopting Parker's proposals and establishing a University Professor of Law) (on file with the Harvard Law School Library); Letter from Asahel Stearns (July 5, 1817) (addressed to John Thornton Kirkland, accepting the new position) (on file with the Harvard Law School Library); Letter from Asahel Stearns (July 11, 1817) (addressed to John Thornton Kirkland; offering a proposed announcement of the establishment of the new school, along the lines proposed by Parker) (on file with the Harvard Law School Library); Corporation Record, Vol. VII (1827-1836), 125-26, 134-36, 146 (including a Report from the Committee on the Law School, dated June 11, 1829, recommending a restructuring of the Professorships; a report, dated August 20, 1829, on the President's and Fellows' votes to appoint John Ashmun to the Royall Professorship, to establish the Dane Professorship, and to appoint Joseph Story to the latter; and a report on a meeting on August 20, 1829 amending the Royall Statutes to make the Royall Professor jointly responsible with the Dane Professor for living in Cambridge (!) and for offering a "course of instruction" in law, with a list of topics to be included); Statutes of the Professorship of Law in Harvard University

(or, as the more progressive thinkers redesignated it, a University) implied the emergence of legal science – the transformation of law from (as the protagonists would have said) a despised craft bent on arid manipulation of ancient forms into, as Parker put it, “a comprehensive system of human wisdom.”<sup>67</sup> Here is Parker on this inaugural vision:

For the first century of our history . . . [t]he [legal] profession was probably followed by men of low minds and lower reputation, whose efforts were limited to the mechanical drudgery of the craft . . . .

To a familiar knowledge of our municipal regulations, [the new postrevolutionary generation of lawyers] added an extensive acquaintance with other sciences; and the law as understood and administered by them was a comprehensive system of human wisdom, derived from the nature of man in his social and civil state, and founded on the everlasting basis of natural justice and moral philosophy.<sup>68</sup>

Parker concluded by recommending the establishment of a law school “for the instruction of resident graduates in jurisprudence” before they “enter into the office of a counsellor to obtain a knowledge of practice.”<sup>69</sup> Legal science, law as jurisprudence, law as a principled manifestation of natural justice and moral philosophy, legal education as an elite and abstract precursor to enlightened practical engagement. Law as reason to protect the new liberties of the post-colony.

Joseph Story — ten years later recruited to the newly created Dane Professorship in a significantly restructured law department designed to deliver on Parker’s inspiring vision<sup>70</sup> — looked back this way on the appointment of Isaac Parker as the first Royall Chair:

It was a critical moment in the progress of our jurisprudence. We wanted a cautious but liberal mind to aid the new growth of principles to enlarge the old rules, to infuse a vital equity—we wanted a mind which with sufficient knowledge of the old law was yet not a slave to its forms, which was bold enough to invigorate it

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(1829) (signed by the next Royall Professor Simon Greenleaf; these Statutes reallocate the duties of the Dane and Royall Professorships, making the Dane Professor the “head of this department,” requiring the Royall Professor to teach those subjects not addressed by the Dane Professor’s lectures and to take “immediate charge and oversight of the Students, meeting with them frequently at stated periods to ascertain their progress, to assist in & stimulate their studies, and to explain and remove such doubts & embarrassments as may occur in the course of their reading”). For the actual curriculum established by 1834, see Simon Greenleaf, *Sketch of the Law School at Cambridge: A Discourse pronounced at the Inauguration of the Author, as Royall Professor of Law, in Harvard University, August 26, 1834*, 13 AM. JURIST LAW MAG. 107, 122-24 (1835) (discussing Royall Chair inaugural lecture). For an assessment of the innovations initiated by Parker and carried out in these successive waves of institutionalization, see Roscoe Pound, *Founding of the Harvard Law School*, [1939] 3 Y.B. Harvard Law Sch. 17-24.

67. WARREN, *supra* note 21, at 300-01.

68. *Id.* at 301.

69. *Id.* at 302.

70. See *supra* note 66 for the story told through the documents that record its various crises.

with new principles—not from the desire of innovation but the love of improvement. We wanted a sobriety of judgment but at the same time a free spirit . . . Such a man was Parker.<sup>71</sup>

Note the word “slave” in Story’s praise of Parker: the first Royall Chair “was . . . not a slave” to the forms of the old law;<sup>72</sup> he had, instead, a “free spirit.”<sup>73</sup> This is the very revolutionary rhetoric which freedmen as far back as 1873 in our Isaac Royall legacy (and further back in other records) had deployed against a legal order which was not to be “the old law” until a mighty war had been fought and won.

I thought it would be good, in closing, to contemplate the contemporaneous *black* legacy of Isaac Royall, Jr. – Belinda, Forton Howard and his fellows. What were they doing in 1783, when Justice Cushing’s jury instruction in *Quock Walker* supposedly emancipated the slaves of Massachusetts? In 1816, when Isaac Parker gave the first Royall Chair inaugural lecture? In 1826, while the third Royall Professor, Simon Greenleaf, and the second Dane Professor, Joseph Story, launched Harvard’s third attempt to put in place a law curriculum that matched Parker’s vision? We are talking here about two sides of the Royall legacy; two groups of actual historical contemporaries – people who may well have known, and would certainly in some cases have seen each other across the immense social divide imposed by the heritage of slavery. It’s hard to imagine that they did not encounter each other during the emerging black intelligentsia’s campaign of freedom suits.

But we know so little about the people Isaac Royall owned, sometimes not even their names. We have a last name only for the emancipated Forton Howard. For only nine of them – including Hector (burned at the stake on Antigua in 1737) and George (dead at his own hand in 1776) – do we have dates of death.<sup>74</sup> I want to write out the names of all those who we know lived as his slaves and who, like Belinda, joined in the struggle against slavery. But to do that I have to read also the names of others who died in bondage and whose spirits may have been fully eclipsed by the wrong done to them. Nor can I disentangle those who were emancipated but died defeated by the stringencies of their new condition. We can’t even know who among them were *alive* in 1783, 1816, 1826. So, as much as I would like to claim the legacy of those Royall slaves who might have lived free and struggled with Belinda and Forton Howard for emancipation — I just can’t sort them out. I am left with the list of those who might have been alive when Isaac Royall, Jr. made out his will — Fortune, Barron, Ned, House Peter, Cuffe, Smith, Philip, Quamino, Ruth, Sue, Jonto, George, Captain, Santo<sup>75</sup> — and those we know were his slaves when he died — George, Abraham, Betsey, Nancy, Cooper, Hagar, Joseph, Mira, Phebe, Plato, Stephy, Diana, Joseph, Belinda, Joseph, Prine, Priscilla, Bath-

71. WARREN, *supra* note 21, at 296 (internal citations omitted).

72. *Id.*

73. *Id.*

74. Chan, *supra* note 2, at 284-85 tbl.7.1.

75. These are the slaves Isaac, Jr. inherited at his father’s death and who might have lived to be emancipated. See Chan, *supra* note 2, at 288 (also listed is “Girl 6 years of age”).

sheba and Nanny.<sup>76</sup> It is a solemn roll call, as intrinsic as the first one I read to our Isaac Royall legacy.

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76. These are the Royall slaves for whom we have any record at all after Isaac Jr.'s death in 1778. See Chan, *supra* note 2, at 285.