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The Confluence of Law and Antebellum Black Literature

LAWYERLY DISCOURSE AS A RHETORIC OF EMPOWERMENT

Andrea McArdle*

Abstract. This article argues that the acculturation of black Bostonians to the rhetoric of the law during the Revolutionary era was constitutive and sustaining. The article examines how three pivotal Boston-based antebellum authors—Prince Hall, David Walker, and Maria Stewart—appropriated the rhetoric of legal pleading used in Revolutionary-era government petitions and freedom suits (petitioning for redress of grievances, closely analyzing precedential texts, distilling ideas into reasoned argument, adducing factual proof, the pointed use of narrative and the interrogative mode) to produce a literature of complaint and rights—assertion. The central premise of the article is that antebellum black texts used these lawyerly discursive practices ironically, as an empowering move, to draw attention to the disparity between the rhetoric of rights and actual practice. Because these “lawyer’s words” called upon the authority and salience of the law as a source of rights in the process of claiming rights, lawyerly discourse served a sustaining strategy of empowerment for black people, and captured the sense of irony in their experience.

Antebellum black literature was preeminently a project of public discourse, an externalization of African Americans’ struggle to achieve civil and political rights under law.¹ Its public petitions, pamphlets, tracts, speeches, and newspaper essays, as well as sermons and autobiographical narratives of men and women who endured and later escaped slavery, formed a genre of protest that was crafted with a sense of mission and an intense consciousness of audience. Much of this publicly engaged literature, particularly the notable work that

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appeared in Boston during the early antebellum period, critiqued legal and social inequalities and advocated a strategy of self-help in a language that resonated with the modes and forms of law. Drawing on James Boyd White's conception of law as "a set of terms and texts and understandings,"² this article posits that rhetorical features conventionally associated with legal advocacy constitute a lawyerly discourse, a set of texts and methods deriving from the process of legal reasoning and argumentation.³ It argues that the acculturation of black Bostonians to the rhetoric of the law during the Revolutionary era was constitutive and sustaining. Specifically, the article examines how three pivotal Boston-based black authors from the early antebellum period—Prince Hall, David Walker, and Maria Stewart—appropriated the rhetoric of legal pleading used in Revolutionary-era government petitions and freedom suits (petitioning for redress of grievances, closely analyzing precedential texts, distilling ideas into reasoned argument, adducing factual proof, using narrative and the interrogative mode)⁴ to produce a literature of complaint and rights-assertion.

The central premise is that antebellum black texts used these lawyerly discursive practices ironically, as an empowering move, to draw attention to disparity between the rhetoric of rights and actual practice.⁵ The literary production of these antebellum cultural figures is addressed in terms of the question posed by historian Vincent Harding: "What is the role of the word—the spoken word, the preached word, the whispered-in-the-nighttime word, the written word, the published word—in the fight for black freedom?"⁶ And consideration is given to literary scholar Jon-Christian Suggs's suggestive response: black literature has provided an "interrogative text," a "parallel narrative often quite at odds with the canonical narrative of white American life."⁷ This interrogation locates the irony inherent in the lives of American blacks in the dissonance between American precept and practice concerning access to civil and political rights.⁸ Suggs's use of irony and interrogation inform the argument of this article, as does Harding's attention to the role of language.

Because "lawyer's words" call upon the authority and salience of law as a *source* of rights in the process of *claiming* rights, lawyerly discourse has served a sustaining strategy of empowerment for black people, and captured the sense of irony in their experience. This article introduces this theme in relation to the Revolutionary-era discursive traditions of public legal challenges to slavery and racial inequality, and then examines the work of three Boston-based

antebellum authors. First, it considers the hortatory addresses of Prince Hall, the founder of the African Masonic Lodge in Boston, who did much to “publicize” a black voice⁹ in the late eighteenth and early nineteenth century. Hall anticipated later abolitionists in his critique of racial inequality, call for community solidarity, and elaboration of blacks’ moral superiority to whites. The article then examines the lawyerly methods and impact of David Walker’s controversial *Appeal to the Coloured Citizens of the World*, published in three editions in Boston in 1829 and 1830.¹⁰ Circulated widely among free blacks in Boston and elsewhere in the North, the *Appeal* was also smuggled into the South, where its call for resistance, framed in terms of divine providence, has been posited as a possible catalyst for Nat Turner’s storied slave rebellion in 1831.¹¹ Finally, the article discusses author and lecturer Maria Stewart’s multiple roles as critic of white institutions and advocate, exhorter, and goad to Boston’s free blacks. In the early 1830s, Stewart continued Hall’s and Walker’s efforts to contribute to an antebellum black public sphere, an albeit limited “discursive space” in which free blacks engaged in reasoned discussion about access to legal rights and political status.¹²

“WE HAVE IN COMMON WITH ALL OTHER MEN A NATURAL RIGHT TO OUR FREEDOM”: ENGAGING THE LEGAL CULTURE OF REVOLUTIONARY-ERA BOSTON¹³

The “lawyerly” character of early antebellum black literature had its provenance in Boston’s well-developed tradition of public advocacy, and in black Bostonians’ participation in the city’s charged Revolutionary-era legal culture. In that culture, republican discourse invoked the law as a mechanism for vindicating rights.¹⁴ As the Boston-area colonial resistance movement in the 1770s marshaled a growing literature of argument, pointed questioning, and assertions of aggrievement against the legitimacy of British rule,¹⁵ Boston’s black community adopted similar rhetorical strategies. Free and enslaved blacks framed challenges to bondage in petitions to government officials¹⁶ that drew attention to the logical disjunction between domestic slavery and the colonists’ own objections to political bondage to Britain.¹⁷ At the same time, the comparative openness of the Massachusetts courts to the claims of persons of color¹⁸ encouraged enslaved blacks to use the litigation process to pursue freedom.¹⁹

Suing for Freedom

An important early link between black cultural experience and legal discourse was the freedom suit. The legal position of slaves in Massachusetts was complicated by their hybrid character: slaves were taxable, inheritable, and subject to judgment levy as property.²⁰ Nonetheless, slaves could invoke some of the legal protections to which freemen in Massachusetts were entitled, among them a right of personal security against assault or corporal punishment,²¹ a right to possess property,²² and a right to participate in judicial proceedings on the same terms as free members of the community.²³ This participation encompassed both a capacity to testify in legal proceedings as a non-party witness,²⁴ and a right to maintain a lawsuit on one's own behalf.²⁵ Unlike the rule in other colonies, Massachusetts did not limit the testimonial capacity of blacks to cases involving other blacks; rather, blacks in Massachusetts—both slave and free—were permitted to testify against, or on behalf of, white persons as well.²⁶

Lawsuits contesting slavery were initiated at least from the beginning of the eighteenth century. As early as 1701, for example, a slave of Judge Saffin of Boston successfully secured his liberty after suing his owner for failing to manumit him as he had promised.²⁷ The incidence of freedom suits became more frequent in the years preceding the Revolutionary War,²⁸ and it seems fair to presume that they were spurred on at least in part by the political rhetoric of the time.²⁹ Although the personal voices of the slave-plaintiffs were, at best, mediated by their legal representatives in the litigation process, black Bostonians' involvement in the discursive practices of pleading and argument opened up an important avenue of cultural expression.

Typically, these suits were grounded in a theory of trespass to the person, and sought recovery of monetary damages for false imprisonment,³⁰ or assault and battery.³¹ The gravamen of a trespass claim was that a right of personal or bodily integrity—here, liberty—had been violated.³² Arguments of counsel were not consistent, however, in identifying the source of the right.³³ Nor do extant records offer illumination of the grounds for judicial rulings.³⁴ Fragmentary notes of John Adams's observation of, or actual participation in, suits from the 1760s and 1770s, discussed below, provide some insight into the rhetorical possibilities for arguing these claims.

In some cases, slave-plaintiffs' counsel invoked principles of contract law. In the case of *Caesar v. Taylor*, for example, originating in the Essex Inferior Court, Newburyport, in 1771, the plaintiff, Caesar, based his claim to freedom largely on a contract in which his master had agreed to release the plaintiff upon

the payment of a sum of money, a substantial part of which had been paid; instead, the owner, Taylor, had sold Caesar to another.³⁵ John Adams, appearing for the owner, cited precedent for the proposition that “negroes are presumed to be slaves and must make their freedom appear.”³⁶ Other challenges to a party’s enslaved condition were based on ancestry. In *Slew v. Whipple*, a suit brought in the Essex Superior Court, Salem, in 1766, plaintiff’s attorney Benjamin Kent argued that Jenny Slew was by reputation the child of a white mother and a Negro father.³⁷ Adams’s notes of the proceedings indicate that Judge Cushing, one member of the panel of judges hearing the case, was persuaded by that notion, applying the theory that the child’s condition is controlled by that of her mother.³⁸

Challenges on such grounds assumed the legitimacy of slavery,³⁹ but counsel for slave-plaintiffs at times did elaborate more nuanced arguments, combining aspects of natural law, common-law precedent, and general principles of interpretation. Plaintiff’s counsel adopted such an approach in *Caesar v. Greenleaf*.⁴⁰ There, the attorney for the slaveowner cited the acceptance of slavery in ancient cultures and in colonial practice as a normative basis for enslavement.⁴¹ John Lowell, Caesar’s attorney, countered that “the precepts of revealed law, golden rule of the gospel are that we are not to sell our brethren, that we are to do as we would be done unto.”⁴² Moreover, without an explicit foundation for slavery in the law of the province, “liberty is not to be taken from him by implication of law.”⁴³ Nor, Lowell argued, was defendant’s reliance on customary practice well founded. The law of the province was within recorded memory, and established that slavery was permitted only in the case of consent or capture “in lawful war.”⁴⁴

Lowell’s closely reasoned argument was multilayered and rhetorically complex. At one level it hewed closely to familiar points of doctrine, rooting the discussion in the common law, which, as he emphasized, “abhors slavery.”⁴⁵ Yet Lowell also infused his argument with biblical resonances (“we are to do as we would be done unto”) and idioms (the reference to “brethren”).⁴⁶ And he explicitly introduced the theoretics of natural rights, both in the insistence upon customary practice that is “reasonable” and “just,”⁴⁷ and in his argument that Caesar had a natural right to be free in order to assume responsibility for a family.⁴⁸ Although we can only speculate whether strategies of argument premised upon conceptions of natural law influenced the outcome of the suit, the case resulted in a jury verdict in favor of the slave-plaintiff.⁴⁹

The history of one set of cases, the *Quock Walker* litigation, suggests that courts were receptive to natural rights theory. Placing in issue the legality of Walker's enslavement, this cluster of suits resulted in a broad ruling that construed Massachusetts' recently adopted constitution as conferring rights that were irreconcilable with slavery.⁵⁰ The procedural context for that ruling was a criminal indictment charging Walker's master, Jennison, with assault and battery.⁵¹ Anticipating a constitutional challenge to slavery, defense counsel argued that, because the 1780 constitution had not banned slavery, there was no basis on which to read a prohibition into the document.⁵² Charging the jury to find Jennison guilty on the evidence, Chief Justice Cushing interpreted article one of the state constitution as abrogating slavery "by the granting of rights and privileges wholly incompatible and repugnant to its existence."⁵³ This article, the Declaration of Rights, provided that "[a]ll men are born free & equal, & have certain natural, essential, & unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness."⁵⁴ On the basis of this instruction, the jury found Jennison guilty as charged.⁵⁵

Acknowledging that the state's constitution did not explicitly outlaw slavery, Cushing noted that any supposed right to hold slaves was similarly lacking an affirmative sanction in the law, but rather was the outgrowth of custom.⁵⁶ Cushing then posited transcendent "rights and privileges" as preemptive of customary practice.⁵⁷ Whether or not it can be said that a declaration in the context of a jury charge had the legal effect of dismantling slavery (in practice, slavery persisted for some time in Massachusetts after the ruling in Walker's case),⁵⁸ the ruling resonated with the growing public opposition to the institution.⁵⁹ In rhetorical effect, the ruling came to serve as the symbol of the elimination of slavery in Massachusetts, and contributed to the robust idiom of rights associated with its Revolutionary-era legal culture.

Petitioning for Rights

The resort to legal institutions within the black community was not limited to the courts. During the last quarter of the eighteenth century, blacks in Massachusetts, and particularly Boston, directed petitions to legislative or executive officials enumerating their grievances.⁶⁰ In substantive scope, these petitions advocated dismantling the slave trade,⁶¹ protested the denial of suffrage and

access to public education to taxpaying blacks,⁶² and sought support for plans to emigrate to Africa.⁶³ Arguing the dissonance between the persistence of slavery and an enlightened polity,⁶⁴ these petitions as a genre⁶⁵ afforded Massachusetts' black population considerable scope for articulating aggrievement.

Reliance on petitions to government gained considerably during the 1770s, suggesting that the black community was both conscious of, and responsive to, an increasingly contentious legal and political culture.⁶⁶ The petition of "Felix" to the colonial governor and the legislature in January 1773 is suggestive: its self-deprecating tonality lulls the reader into a false sense of the writer's ambitions. Though "presuming not to dictate" to his addressees, the writer pointedly asserted that the brutalizing effects of slavery were inimical to "every moral Virtue except Patience."⁶⁷ When the petitioner asks, "How many have had . . . their lives imbittered with this most intollerable Reflection, that . . . neither they nor their children to all Generations, shall ever be able to do, or to possess and enjoy any thing, no, not even Life itself," the tonal disjunction in the text becomes marked.⁶⁸ The insistence of the question posed, and the unabashed expression of complaint, impart a sense of futility that suggests despair hovering just below the surface of his words.

Capturing the emotional tone of lamentation and estrangement characteristic of a black jeremiad,⁶⁹ the petitioner sheds all pretense of restraint: "We have no Property! We have no Wives! No Children! We have no City! No Country!"⁷⁰ The repetition of the exclamatory mode, and the alternating pattern of complete sentence followed by a fragment ("No Children!" "No Country") convey a peremptoriness, a sense of urgency, as well as a poignant mournfulness. In another tonal shift, the petitioner goes on to pledge submission to the will of God, and obedience to earthly masters.⁷¹ Concluding, the petition articulates the normative standard that should guide its addressees, that is, "what is wise, just, and good."⁷² The inclusion of justice in the calculus resonated with the theoretics of natural rights, which, as noted, was the intellectual and rhetorical foundation for much of the public discourse of this period.⁷³

As political disaffection intensified in the 1770s, the rhetoric of natural rights became more marked in petitions from enslaved blacks, as it did more generally in the political debate concerning the legitimacy of British rule.⁷⁴ The extent to which these black petitioners appropriated Revolutionary discourse to their own production appeared tellingly in two related petitions, the first from May 1774, the second dated January 1777. Emphasizing their status as

men, the authors of the earlier petition asserted that “we have in common with all other men a natural right to our freedom,” and, “as . . . a freeborn Pepl . . . have never forfeited this Blessing by aney compact or agreement whatever.”⁷⁵ They reminded colonial governor Thomas Gage and the provincial legislature that they had been “unjustly dragged by the cruel hand of power from our dearest friends and sum of us stolen from the bosoms of our tender Parents . . . deprived of every thing that hath a tendency to make life even tolerable.”⁷⁶ Using synecdoche (“the cruel hand of power”) to create an image of the wrenching physicality of abduction, and anaphora to pose a series of questions (each beginning with the construction “How can”), the petitions underscored the unreasonableness of laws by which some men purported to enslave others:

[H]ow can a slave perform the duties of a husband to a wife or parent to his child . . . How can the wife submit themselves to there husbands in all things How can the child obey their parents in all things . . . how can the master and the slave be said to fulfil that command Live in love let brotherly Love cotuner and abound Beare yea one anothers Bordenes How can the master be said to Beare my Borden when he Beares me down whith the Have chanes of slavery.⁷⁷

The interrogative sentence structure and repetition of the verb “to bear” coupled with progressively more onerous objects/consequences for the writers (from bearing one another’s burdens to my burden to bearing me down) call attention to the plight of enslaved people. The unpunctuated construction creates an impression of urgency and, in the end, there is no escaping the anger and the anguish crystallized in the petitioners’ relentless questioning. As one question spills over into the next, without pause for answers, it becomes clear that the questions are unanswerable, and that only the questions matter.

The later petition, from 1777, appears to have been a reworking of the 1774 document.⁷⁸ However, the petition’s rhetorical power is assured, both in its pointed analogy and contrast between the position of enslaved blacks and that of the (white) colonists vis-à-vis Britain,⁷⁹ and in emphasizing the irreconcilability of slavery with revolutionary values.⁸⁰ Recognizing the similar impulses that actuated the colonists and enslaved blacks in their quests for liberation (neither were “without spirit to Resent the unjust endeavors of others to reduce them to a state of bondage and Subjection”),⁸¹ the petition identified the critical distinction between them—the distinction between “A Live of Slavery,”⁸² and the colonists’ use of slavery as metaphor and political symbol.

In tone and content, these Revolutionary-era petitions exemplified a developing discourse of protest and aggrievement, exploiting the logical disjunction of the colonists' tolerance of domestic slavery while they protested against their own political bondage to Britain.⁸³ The petitions afforded expressive possibilities for the black communities in Boston and other cities in Massachusetts; they were a means of appealing to government and a vehicle for building a "culture of argument," to borrow White's conception of the law itself.⁸⁴ The process of shaping a culture continued in the years following the Revolutionary War, both at a local level and later as a national movement:⁸⁵ leaders of Boston's emergent black community critiqued American institutional practices in modes of address linked to the discursive traditions of petitions and freedom suits. By appropriating these lawyerly discursive practices, black cultural production associated itself with the law's claim to rationality and moral authority.

"WE MUST BE GOOD SUBJECTS TO THE LAWS OF THE LAND . . . GIVING HONOUR TO WHOM HONOUR IS DUE": THE CULTURAL ACTIVISM OF PRINCE HALL⁸⁶

The legal and political environment in post-Revolutionary War Massachusetts afforded ample cause for blacks to resort to the rhetoric of the law. The position of free black people in the post-war period remained marginal, even after the Supreme Judicial Court of Massachusetts essentially outlawed slavery in 1783, declaring it to be inconsistent with the Massachusetts constitution.⁸⁷ In fact, Massachusetts' white population did not embrace its black community. Blacks' civil liberties were limited,⁸⁸ and available economic opportunities were similarly truncated.⁸⁹ In the depressed post-war economy, anxiety over competition for scarce jobs prompted aggressive behavior against blacks in Boston.⁹⁰ And a restrictive notion of polity—based on a shared ethnocultural heritage—kept blacks outside the definition of citizenship.⁹¹ Under these circumstances, free blacks—spared the total brutalization of slavery but denied equality of civil status and economic opportunity with white Americans—continued in the posture of public complainants.⁹²

The early involvement of black people in Massachusetts, and particularly Boston, in the discursive conventions of the law afforded a rhetorical frame of reference for their subsequent literary output: examined for structure, theme,

tone, and voice, their post-Revolutionary War cultural production used rhetorical features associated with Boston's public legal discourse of the 1770s and early 1780s.⁹³ Prince Hall's use of the hortatory oration as a filter for social protest reflected this discursive character. Described by one literary scholar as "in no sense a man of letters,"⁹⁴ Hall nonetheless was preeminent among black Bostonians, one of the first "black public men" in the new nation,⁹⁵ whose contributions to public discourse were of a sufficiently literary quality to warrant inclusion in several collections and histories of early African American writing.⁹⁶

As Hall was instrumental in crafting a number of the revolutionary-era petitions for the black community,⁹⁷ it seems inevitable that his later work would bear the earmarks of legal discourse. After the war, Hall continued to draft petitions, now to the Massachusetts state legislature, for financial support for an African colonization effort, and to draw attention to the abduction and sale into slavery of three free blacks.⁹⁸ In fact, Hall called upon his skill and experience as a petitioner to aid the establishment and later proliferation of African Masonic orders.⁹⁹ After being granted membership in a Masonic lodge attached to a regiment of British soldiers in Boston in 1775, but unable to secure admission into the white Massachusetts lodge, Hall petitioned for and was ultimately granted a charter from England in 1784, and used that official status to charter African lodges in other communities in New England and the Northeast.¹⁰⁰ Hall's African Lodge, in turn, used the device of the petition to request legislative aid for black education¹⁰¹ and to end slave trading in Massachusetts.¹⁰²

During the last decade of the eighteenth century, Hall authored inspirational addresses to the lodge membership that drew on biblical allusions, historical scholarship, and a finely-tuned ironic stance through which he smuggled in a discourse of complaint. In an address from 1792, Hall demonstrated that even a seemingly innocuous adjuration to obey the laws of the polity could become an opportunity for subtle critique: "Again we must be good subjects to the laws of the land in which we dwell, giving honour to our lawful Governors and Magistrates, giving honour to whom honour is due."¹⁰³ The use of "lawful" to modify the Governors and Magistrates meriting "honour" seems consonant with the general tenor of the passage: it is desirable to observe the law. Yet the language is open to another, more subversive reading: the anaphoric use of "giving honour" at the beginning of sequential clauses underlines an intent to delineate the scope of authority narrowly; it is appropriate to

obey those who exercise their authority *lawfully*, and no others. Hall's skill in disguising an invitation to disobey authority allowed him a safety margin of ambiguity, in which he avoided an openly seditious message.

Typically, Hall embedded social protest in digressions and tonal shifts. In this same address, Hall expressed concern that his listening audience might be unable to understand his historical discourse, given their lack of opportunity for an education. He then segued to the real subject of the passage, which was to remind his audience that their children similarly lacked educational opportunity—although blacks were taxed to support public education.¹⁰⁴ Recounting the history of the Masonic order during the early and middle ages, Hall used the past as a springboard for reflections on the present:

Query, Whether at that day, when there was an African church, and perhaps the largest Christian church on earth, whether there was no African of that order; or whether, if they were all whites, they would refuse to accept them as their fellow Christians and brother Masons; or whether there were any so weak, or rather so foolish, as to say, because they were blacks, that would make their lodge or army too common or cheap? Sure this was not our conduct in the late war; for then they marched shoulder to shoulder, brother soldier and brother soldier, to the field of battle; let who will answer; he that despises a black man for the sake of his colour, reproacheth his Maker.¹⁰⁵

Posing a question in the discursive tradition of the law, elaborated and reinforced rhetorically by the anaphoric use of “whether,” Hall’s “query” seems less scrupulous about disguising its emotional content than the earlier passage, as he alludes here to his own recent exposure to racial discrimination: at the hands of the Massachusetts order of Masons, which had not “invited or considered” blacks for a charter;¹⁰⁶ by the colonial army, which had rebuffed offers to have slaves serve in their ranks;¹⁰⁷ and by the Commonwealth, which apparently refused the services of Hall and the Masonic membership to assist in subduing Shays’ Rebellion,¹⁰⁸ and refused a request to provide financial support to educate black people.¹⁰⁹ Yet emotion did not divert Hall from his craft. In his repetition of the term “brother,” Hall connected the passage thematically to earlier references to Christian brotherhood and the Samaritan of the gospel account. And by concluding with another biblical allusion, Hall transmuted a surfeit of personal emotion into conventional religious discourse, compatible with the content and tone of his ostensible text.

A 1797 address to the African Lodge showcases Hall's pointed use of the interrogative mode and precise visual images to draw attention to the racial oppression and lack of humanity entailed in slavery:

Among these numerous sons and daughters of distress, I shall begin with our friends and brethren; and first, let us see them dragg'd from their native country by the iron hand of tyranny and oppression, from their dear friends and connections, with weeping eyes and aching hearts, to a strange land and strange people, whose tender mercies are cruel; and there to bear the iron yoke of slavery & cruelty, till death as a friend shall relieve them. And must not the unhappy condition of these our fellow-men draw forth our hearty prayer and wishes for their deliverance from these merchants and traders, whose characters you have in the xviii chap. of the Revelations, 11, 12, & 13 verses, and who knows but these same sort of traders may in a short time, in the like manner, bewail the loss of the African traffick, to their shame and confusion: and if I mistake not, it now begins to dawn in some of the West-India islands, which puts me in mind of a nation (that I have somewhere read of) called Ethiopians, that cannot change their skin: But God can and will change their conditions and their hearts, too; and let Boston and the world know, that He hath no respect of persons; and that bulwark of envy, pride, scorn and contempt, which is so visible to be seen in some and felt, shall fall, to rise no more.¹¹⁰

Interweaving biblical references with allusions to contemporary conditions of unrest and social change in Haiti, the injunction to his audience to empathize with the experiences of enslaved black people hints at the possibility that the recently improved situation for blacks in parts of the West Indies could occur in Boston as well. There is no overt suggestion that such change should occur by violence. But the critique of the slave trade is undisguised, heightened rhetorically by the figurative use of "iron hand," and the image of being "dragged" from one's homeland (both recalling language in the slave petitions of the 1770s),¹¹¹ and an arresting use of antithesis ("tender mercies are cruel," "death, as a friend").¹¹²

Invoking biblical precedent of interactions between white and black people, and using repetition and parallel construction of a series of sentences for emphasis,¹¹³ Hall inferred, in lawyerly fashion, that the degradation of blacks was not based on history or inherent condition:

The great law-giver, Moses, who instructed by his father-in-law, Jethro, an Ethiopian, how to regulate his courts of justice and what sort of men to choose

for the different offices; . . . So Moses hearkened to the voice of his father-in-law, and did all that he said. Exodus xviii, 22–24 . . . So our Grand Master, Solomon, was not ashamed to take the Queen of Sheba by the hand, and lead her into his court at the hour of high twelve, and there converse with her on points of masonry . . . our Grand Master Solomon did not divide the living child, whatever he might do with the dead one, neither did he pretend to make a law to forbid the parties from having free intercourse with one another, without the fear of censure, or be turned out of the synagogue.¹¹⁴

Then, invoking metaphor to underline the precarious position of free black people in Boston at that time (carrying their “lives in their hands” as the “arrows of death” flew about their heads), juxtaposed to a hoped-for future of change, Hall stated the factual basis for his complaint of mistreatment with the specificity of a legal pleading:

Patience I say, for were we not possess'd of a great measure of it you could not bear up under the daily insults you meet with in the streets of Boston; much more on public days of recreation, how at such times you are shamefully abus'd, and that at such a degree that you may truly be said to carry your lives in your hands, and the arrows of death are flying about your heads; helpless old women have their clothes torn off their backs . . . My brethren, let us not be cast down under these and many other abuses we at present labour under: for the darkest is before the break of day.¹¹⁵

By adjuring his Masonic fraters to forebear present indignities, and appealing to them to cultivate a sense of moral rectitude and superiority vis-à-vis white people, Hall adopted a familiar stance among black writers in the late eighteenth century,¹¹⁶ and used legal discursive modes to summon up these abuses with precise detail and vivid imagery:

My brethren, let us remember what a dark day it was with our African brethren six years ago, in the French West-Indies. Nothing but the snap of the whip was heard from morning to evening, hanging, broken on the wheel, burning, and all manner of tortures were inflicted on those unhappy people for nothing else but to gratify their masters pride, wantonness, and cruelty: but blessed be God, the scene is changed, they now confess that God hath no respect of persons, and therefore receive them as their friends, and treat them as brothers. Thus doth Ethiopia begin to stretch forth her hand, from a sink of slavery to freedom and equality.¹¹⁷

We can almost hear the snap of the whip in a passage that is interlaced with recognizable paraphrasing of language from the Acts of the Apostles (God is no respecter of persons)¹¹⁸ and the Declaration of Independence (“train of abuses and usurpations”).¹¹⁹

The genius of Hall’s production was its highly nuanced character. Although unstable at times, it cohered through his deft manipulation of text, theme, and tone. In scope and sophistication, Hall’s work demonstrated literary merit, operating on several textual levels. Most obviously it bore the earmarks of a hortatory address designed to inspire and edify through the use of examples, biblical allusions, and positive reinforcement. At the same time, this religiously pitched language had a lawyerly cast, reflecting not only commonalities between these discursive modes but also the legacy of Revolutionary-era legal culture and Hall’s own participation in creating its rhetoric of argument and complaint. The language of complaint in Hall’s work was never sustained, and it was often subtle, but the attentive reader or listener of that period would not miss its applicability to current events, nor mistake the ways in which Hall’s rhetorical craft, his controlled but critical voice, drew attention to the intractability of racial prejudice in late eighteenth-century Boston. Focusing on the period in which Hall was active, Dorothy Porter used the term “spokesmen” to refer to individuals who gave voice to the grievances and aspirations of the black community.¹²⁰ In the next generation, Stewart and Walker would serve a similar function. Hall’s collection of orations provided a point of departure for the more polemical writing of these authors, his cultural successors in the early nineteenth century.

The years intervening between Prince Hall’s generation and the first stirrings of abolitionism as a broader movement in the 1820s produced new evidence of the extent of whites’ resistance to racial inclusion, and solidified the beginnings of a national strategy by blacks to achieve equality.¹²¹ The founding in 1816 of the American Society for Colonizing the Free People of Colour of the United States inaugurated an extended public debate about the merits of free blacks emigrating to Africa as an alternative to racial integration in the United States,¹²² engaging ideas broached more than thirty years earlier in Thomas Jefferson’s *Notes on the State of Virginia*.¹²³ Certainly some members of the black community favored emigration.¹²⁴ However, many blacks opposed in principle the efforts of white Americans to dictate the terms under which African “colonization” would occur.¹²⁵ Out of this opposition there emerged a body of protest literature designed to reach a national audience.¹²⁶ In the generation

following Hall, David Walker launched a call for solidarity and resistance in his *Appeal to the Coloured Citizens of the World*, a provocative discourse of challenge published in 1829. Claiming Walker as an exemplar, lecturer Maria Stewart marshaled a vigorous rhetoric in a series of hortatory addresses written and delivered in Boston during the early 1830s. The second half of this article examines Walker's and Stewart's use of "lawyerly" prose as a dominant cultural strategy.

"ENLIGHTEN US AND TREAT US LIKE MEN"¹²⁷: DAVID WALKER'S PROVOCATION

Born in the South, Walker settled in Boston in the early- to mid-1820s, worked as a seller of used cloth, and became active in the anticolonizationist and abolitionist movements.¹²⁸ An engaged member of the Methodist May Street Church led by the ardent anti-slavery advocate Samuel Snowden,¹²⁹ Walker affiliated himself with organizations that promoted solidarity and antislavery sentiment, including the Prince Hall Masons and the Massachusetts General Colored Association (MGCA).¹³⁰ Walker also supported the publication of *Freedom's Journal*, reputedly the nation's first black newspaper, and served as one of its agents.¹³¹ An issue from December 1828 featured a speech that Walker had given that same month to the MGCA membership. Sounding a theme of self-help, the tenor of the quoted language would become a rallying cry in the *Appeal*: "Shall we keep slumbering on, with our arms completely folded up, exclaiming every now and then, against our miseries, yet never do the least thing to ameliorate our condition, or that of posterity?"¹³²

Walker's *Appeal* was an outgrowth, if not a culmination, of black reform efforts in the late 1820s, including the anticolonizationist mission of *Freedom's Journal*, the antislavery campaigns of the Prince Hall Masons, and the work of the MGCA to unify blacks and organize at the national level.¹³³ The debut of *Freedom's Journal* and Walker's own emergence in the North in the late 1820s as consciousness-raiser, political mobilizer, and advocate among black people were seen as an important "institutional" moment in the "Great Tradition of Black Protest."¹³⁴ This moment made salient the multileveled ways in which language functioned to steel black people for the continuing struggle against dehumanization.¹³⁵ Walker's impassioned appeal, less tempered than the *Journal's* "quiet, sound advocacy,"¹³⁶ was both an invitation to black people, enslaved and free, to overcome their subordinated status, and a reproach for their complicit-

ity in their own oppression.¹³⁷ The *Appeal*'s excoriating critique of American legal, religious, and educational institutions and its refutation of claims of blacks' racial inferiority would be read, it was hoped, by (or to) enslaved blacks.¹³⁸ For these reasons, the *Appeal* prompted concern among Southerners who feared its capacity to incite a rebellion.¹³⁹

The Literary Framing of the Appeal: Irony, Parody, and Intertextuality

Engaging the realm of thought as well as action, Walker wanted the *Appeal* to counter the influence of Thomas Jefferson's statements in *Notes on the State of Virginia* denigrating blacks' intellectual capacities.¹⁴⁰ Responding to a set of inquiries posed by France on the physical and political characteristics of the American continent, *Notes* served more generally as an early expression of American exceptionalism, an attempt to project, in Robert Ferguson's terms, a "sense of country."¹⁴¹ Jefferson set out his conclusions on the condition and potential of blacks as part of query 14 of the *Notes*. His ideas were nuanced, encompassing the view that slavery was morally problematic, contrary to the values animating the American Revolution; that Virginia slaveholders seemed prepared to act on that view (an unwarrantedly optimistic assessment); and that, if slavery continued, a violent race war might ensue.¹⁴² At the same time, Jefferson believed that whites and blacks could not coexist in the new republic, noting "with great diffidence" the deficiencies among blacks in reasoning, imagination, and physical appearance that made them incompatible with whites.¹⁴³ As Henry Louis Gates has demonstrated, Jefferson's view that black intellectual work lacked originality and was "imitative" of white models was an Enlightenment-era theme that had appeared earlier in the eighteenth century, notably in the writings of Immanuel Kant and David Hume.¹⁴⁴

Covering "[t]he administration of justice and description of the laws," the response to query 14 summarized proposed laws for Virginia's newly formed state government.¹⁴⁵ One of the proposals would free all slaves born after the law's adoption and deport them from Virginia. Despite Jefferson's own professed abhorrence of slavery as an institution, and his call for its abolition, he was opposed to racial integration.¹⁴⁶ Instead, he cited practical reasons favoring an enforced emigration: biases among whites, blacks' consciousness of injury, and the "real distinctions which nature has made."¹⁴⁷ Walker's efforts to rebut Jefferson's conclusion of blacks' inferiority was the organizing principle for the first article of the *Appeal*.

Jefferson's influence informed the methodology as much as the substance of the *Appeal*. For example, Walker's article 2 offered a systematic "development of facts"¹⁴⁸ instantiating defections and deceptions within the black community,¹⁴⁹ in the manner of Jefferson's fact-intensive studies in *Notes on the State of Virginia*.¹⁵⁰ And if, in organizational structure, the *Appeal* bore a surface resemblance to the United States Constitution, featuring a preamble and four articles of argument (slavery, ignorance, preachers of the Christian religion, and the colonization plan, respectively),¹⁵¹ in format and tone the *Appeal* seemed more akin to another Jeffersonian composition, the Declaration of Independence. This resemblance occurs most markedly in article 4, which elaborates a set of grievances,¹⁵² asserts rights to freedom and personhood ("For you must remember that we are men as well as they");¹⁵³ and justifies violent means, if necessary, to achieve them ("[I]t is no more harm for you to kill a man, who is trying to kill you, than it is to take a drink of water when thirsty").¹⁵⁴ Walker's informed use of key texts from the American legal canon thus served as organizing principle, discursive method, and substantive theme. His intertextual referencing of Jefferson's work entailed an ironic and parodic revision that exemplifies what Henry Louis Gates would describe as the literary trope of "signifying," a "metaphor for Afro-American formal revision," which proceeds ironically, playing upon the audience's expectations, and by "evoking presence by absence through indirection."¹⁵⁵

Throughout the *Appeal*, Walker addressed black and white Americans in turn on the inevitability that blacks would achieve freedom, even if by violent means.¹⁵⁶ The preamble is illustrative. In addition to white Christians, he singled out black Americans who, out of ignorance or complacency, did not want to disturb the status quo.¹⁵⁷ Anticipating an attempt by "the jealous ones among us" to argue that it would be pointless for blacks to seek improvement, he posed a series of questions to preempt that argument:

Can our condition be any worse? Can it be more mean and abject? If there are any changes, will they not be for the better, though they may appear for the worst at first? Can they get us any lower? Where can they get us? They are afraid to treat us worse, for they know well, the day they do it they are gone.¹⁵⁸

The vigor of the language, the concatenation of questions, and the incorporation of antithesis ("will they not be for the better, though they may appear for the worst") achieved a sense of urgency and persistence that resonated with

Revolutionary-era petitions. And although Walker directed his questions to the inertia of the black community, there was an unmistakable challenge to white Americans embedded in the interrogative structure of the passage.

Walker invoked a "God of justice" against those who were in complicity with slaveholding: "Will he not cause the very children of the oppressors to rise up against them, and of times put them to death?"¹⁵⁹ In a deft rhetorical turn, he evoked an aura of danger by purporting not to discuss it: "I will not speak of the destructions which the Lord brought upon Egypt . . . of the hundreds and thousands of Egyptians whom God hurled into the Red Sea for afflicting his people in their land."¹⁶⁰ Walker followed with a series of questions which, with increasing emotional intensity, dramatized the injustice of slavery and the inevitable consequences for the enslavers, by exposing the logical inconsistency in supposing a just God would permit slavery: "Is not God a God of justice to *all* his creatures? Do you say he is? Then if he gives peace and tranquility to tyrants, and permits them to keep our fathers, our mothers, ourselves and our children in eternal ignorance and wretchedness, to support them and their families, would he be to us a God of *justice*?"¹⁶¹ The pointed questioning, the menacing undertones, and the resort to logical argument in the fashion of lawyerly advocacy were pervasive in the *Appeal's* four articles.

Article 1: Historical Argument and Lawyerly Reasoning

Addressing slavery in its American application, Walker demonstrated in article 1 that the position of blacks in America was more vexed than that of any enslaved people in world history, beginning with the Israelites in Egypt:

I call upon the professing Christians . . . to show me a page of history . . . which maintains, that the Egyptians heaped the insupportable insult upon the children of Israel, by telling them that they were not of the human family. Can the whites deny this charge? Have they not, after having reduced us to the deplorable condition of slaves under their feet, held us up as descending originally from the tribes of Monkeys or Orang-Outangs? . . . Has Mr. Jefferson declared to the world, that we are inferior to the whites, both in the endowments of our bodies and our minds?¹⁶²

More than the exploitation of black labor, then, it was the dehumanizing of black people that, for Walker, rendered enslavement galling beyond measure.

As noted, Walker ascribed much of the responsibility for the bestializing of

blacks in the American imagination to Jefferson's *Notes on the State of Virginia*. Applying techniques of lawyerly argumentation, Jefferson had cited evidence of intellectual accomplishment among certain white slaves in Rome, and the apparent absence of similar achievement among black slaves in America. This evidence, Jefferson argued, supported his "suspicion" that the degraded position of blacks in America was not attributable to the institution of slavery but to the limitations of "nature."¹⁶³ Recognizing that Jefferson's influence would ensure that his views would not "pass away into oblivion unobserved by this people and the world,"¹⁶⁴ Walker was concerned that Jefferson's conclusions would prove a self-fulfilling prophecy. Thus, it was not enough that Jefferson's views were challenged by "white friends";¹⁶⁵ Walker was "after those who know and feel, that we are MEN, as well as other people; to them, I say, that unless we try to refute Mr. Jefferson's arguments respecting us, we will only establish them."¹⁶⁶

There had been occasional efforts among African Americans to do so, in addresses to the New York African Society,¹⁶⁷ but Walker's refutation was the most extended and the most publicized.¹⁶⁸ Taking up his own challenge, Walker rejected Jefferson's basis for analogizing enslaved blacks to the slaves of Rome:

Every body who has read history, knows, that as soon as a slave among the Romans obtained his freedom, he could rise to the greatest eminence in the State . . . Have not the Americans instituted laws to hinder us from obtaining our freedom? . . . Further: have not the Americans instituted laws to prohibit a man of colour from obtaining and holding any office whatever, under the government of the United States of America?¹⁶⁹

Adopting Jefferson's own lawyerly method, Walker turned the language of Jefferson's strained ratiocination against itself. Cataloguing the "hellish cruelties" of white Christians in the slave trade, Walker concluded the article with an ironic echo of Jefferson's words in *Notes*: "I therefore . . . advance my suspicion of them [whites] whether they are *as good by nature* as we are or not."¹⁷⁰ In a "motivated repetition"¹⁷¹ of Jefferson's own rhetorical structures, Walker's "suspicion" played on a white text in a way that "functions to redress an imbalance of power."¹⁷²

Articles 2 and 3: The Uses of Emotion

Walker shifted tactics in article 2 (examining the effects of ignorance) with a challenge to his black readership, arguing that "*groveling submissions* and

treachery” within the black community tended to validate Jefferson’s assessment.¹⁷³ Intensifying the rhetoric of menace, Walker suggested that, if sufficiently provoked by the abuses of white Americans, “our natural enemies,”¹⁷⁴ blacks in America would give vent to long-dormant impulses, and respond with equivalent ferocity:

[T]here is an unconquerable disposition in the breasts of the blacks, which, when it is fully awakened and put in motion, will be subdued, only with the destruction of the animal existence. Get the blacks started, and if you do not have a gang of tigers and lions to deal with, I am a deceiver of the blacks and of the whites . . . if you commence, make sure work . . . they want us for their slaves, and think nothing of murdering us in order to subject us to that wretched condition—therefore, if there is an *attempt* made by us, kill or be killed.¹⁷⁵

Heightening a sense of estrangement from white American society—which, from the perspective of Walker and his audience, functioned here as the irreconcilable other—Walker, as Maria Stewart would do soon thereafter in *Religion and the Pure Principles of Morality*,¹⁷⁶ stoked a sense of aggrievement as a way of fostering solidarity among blacks.

As Walker imagined it, blacks would not merely be agents of divine retribution but more active participants, initiators in a confrontation with white America. Certainly, Walker complicated his message by couching his counsel to “kill or be killed” in conditional terms: his advice applied “if there is an attempt made.” Still, the passage seemed to valorize an initiatory act of violence and thus bore the earmarks of incitement. At the same time, Walker historian Peter Hinks suggests the difficulties inherent in reading Walker’s language and emotional tone monolithically. Walker’s “unusually personal form of exhortation”¹⁷⁷ was equally an effort, Hinks concludes, to effect a “social and psychological excavation”¹⁷⁸ of the conditions that had subjugated black people and induced them to identify with a degraded sense of self and possibility.¹⁷⁹ Hinks opines that Walker purposefully eschewed detached, “closely reasoned” argumentation¹⁸⁰ in favor of a “highly personalized emotional response” that would counter Jefferson’s rational, systematic orientation.¹⁸¹ Without denying the emotionality of Walker’s words, I would argue that Walker’s charged language is *lawyerly* because it operates as a deductively reasoned analysis.¹⁸²

When Walker turned to the subject of education, the tone of the *Appeal* became more hortatory than inflammatory: “You have to prove to the Amer-

icans and the world, that we are MEN, and not brutes, as we have been represented, and by millions treated. Remember, to let the aim of your labours among your brethren, and particularly the youths, be the dissemination of education and religion.”¹⁸³ Emphasizing the failure of blacks to pursue “the substance of learning” rather than its mere form, Walker argued that, even with access to schooling, true educational attainment among blacks in America was illusory.¹⁸⁴ In a series of tonal shifts, he exposed how the absence of a substantive education had worked to keep blacks subordinated:

Do you suppose one man of good sense and learning would submit himself, his father, his mother, wife and children, to be slaves to a wretched man like himself . . . No! no! he would cut his devilish throat from ear to ear, and well do slave-holders know it. The bare flame of educating the coloured people scares our cruel oppressors almost to death.¹⁸⁵

Using reasoned argumentation, Walker emphasized that knowledge is empowering; for an educated person, there would be no rational basis for acceding to enslavement. However, in Walker’s teleology, access to education accomplished more than demystification; it would trigger those long-dormant impulses to violence that would ensure the destruction of those who had participated in slaveholding.

Walker also indicted the Christian clerical establishment for complicity in keeping blacks unenlightened. In article 3, Walker excoriated the American ministry, which, in condoning slavery and discouraging religious practice, perverted the spirit and the letter of Scripture.¹⁸⁶ Recalling the tonality and interrogative mode of the Revolutionary-era petitions, Walker constructed a line of argument from a series of questions, each one building logically from the preceding inquiry:

What can the American preachers and people take God to be? Do they believe his words? If they do, do they believe that he will be mocked? Or do they believe, because they are whites and we are blacks, that God will have respect to them? Did not God not make us all as it seemed best to himself? What right, then, has one of Us, to despise another, and to treat him cruel, on account of his colour, which none, but the God who made it can alter?¹⁸⁷

Full of foreboding, Walker combined short, staccato phrasing with anaphora to simulate the style and emphasis of the spoken discourse of a camp meeting

preacher, as in this quoted passage: "O Americans! Americans!! I call God—I call angels—I call men, to witness, that your Destruction *is at hand*, and will be speedily consummated unless you REPENT."¹⁸⁸

Article 4: Signifying on the Jeffersonian Canon

Walker was at his most venomous in his angry response to the white-sponsored emigration movement. Questioning the motives of those who encouraged free blacks to colonize Africa—ostensibly to introduce Western culture and religion to the African continent—in article 4, a dubious Walker discerned a more invidious design: to keep slaves separated from free blacks, whose presence among the slave population might encourage slaves to press for freedom.¹⁸⁹ In a variation on the "long train of abuses and usurpations" of the Declaration of Independence,¹⁹⁰ itself a piece of lawyerly advocacy modeled on a bill in equity,¹⁹¹ Walker appropriated the conventions of the bill by enumerating acts of cruelty perpetrated against blacks.¹⁹² As in article 1, Walker emphasized that the most galling of these cruelties was the imputation of inferiority.¹⁹³

Walker's opposition in the *Appeal* to the colonizing plan demonstrated more aggressively than Prince Hall had done a generation before that the fabled patience of black Americans had been strained to its limit. Tempered in the crucible of experience, the literature of protest was, in Walker's hands, as forthright as Hall's production was subtle. Unlike the veiled challenges of Hall's Masonic addresses, Walker was not inclined to soften the impact of his language:

Remember, Americans, that we must and shall be free and enlightened as you are, will you wait until we shall, under God, obtain our liberty by the crushing arm of power? . . . enlighten us and treat us like men, and we will like you more than we do now hate you, and tell us no more about colonization, for America is as much our country, as it is yours.¹⁹⁴

The rhetorical force and cadence of this extended apostrophe drew in part from the directness of its language, the skillful deployment of the interrogative and peremptory forms, and the dramatic emphasis achieved through parallelism ("America is as much our country, as it is yours") augmented by literary rhetorical devices—variations in the use of conjunctives ("we must and shall be free and enlightened"), synecdoche ("the crushing arm of power"), and antithesis ("we will like you more than we do now hate you"). The threat

of a violent eruption was pervasive, although his address can be distinguished from the merely inflammatory by the recourse to reason: it was within the power of white Americans to avoid a violent confrontation if only they would behave toward blacks as though they were “men.” Failing that, the authority of God would legitimate any violent eventualities.

Ultimately, Walker turned American political rhetoric against itself, holding up to scrutiny the text of the Declaration of Independence, the nation’s originary document. In this way, he was able to highlight the continuities between the Declaration and his own *Appeal* and the dissonance between American public rhetoric and practice:

Do you understand your own language? Hear your language, proclaimed to the world, July 4th, 1776 “we hold these truths to be self evident—that ALL Men Are Created EQUAL!! that they *are endowed by their Creator with certain inalienable rights*; that among these are life, *liberty*, and the pursuit of happiness!!” Compare your own language above, extracted from your Declaration of Independence, with your cruelties and murders inflicted by your cruel and unmerciful fathers and yourselves on our fathers and on us.¹⁹⁵

Concluding with the language of Jefferson, Walker had come full circle. Acknowledging the vexed relation between Jeffersonian thought and the life conditions of American blacks, Walker used the texts of the Declaration and the *Notes* in ironic counterpoint.

If Walker’s recourse to the Declaration was rooted in the liberal values of eighteenth-century republican thought, Walker’s discourse was not representative of a bourgeois public sphere but part of a black “counterpublic” that was critically engaged with liberal thought.¹⁹⁶ Michael Dawson has argued that the black counterpublic transcends a merely critical stance within liberalism but encompasses other perspectives, including nationalism and an emphasis on community over the individual, which thus distinguishes it from the eighteenth-century bourgeois public described by Habermas.¹⁹⁷ Walker’s discourse typifies this complexity of black publicity, which cannot be reduced to an embrace of liberalism. Although he does hold up the liberal values at the core of the Declaration of Independence, throughout the *Appeal* he cultivated a black audience as distinct from (white) Americans, addressing blacks as members of a shared community, to which individuals were accountable.¹⁹⁸

In fact, Walker’s point was to amplify dissonances: the ostensible inclusiveness of the Declaration, whose values had come to animate black people in the

decades after the Revolution,¹⁹⁹ stood in marked contrast to Jefferson's assessments in *Notes* that blacks were incapable by nature of incorporating these cherished values in their own lives. Here, again, Walker's deliberate juxtaposition of Jefferson's words signified on texts that sought to mark (white) Americans as exceptional. Using parody and a "black authorial stance" to disrupt Jefferson's conclusions of blacks' inferiority,²⁰⁰ Walker's appropriation/revision of Jefferson's terms demonstrated a "complex attitude towards attempts at domination, which can be transcended in and through language."²⁰¹ By referencing and reasoning from texts that served as touchstones of American legal and political thought, Walker adopted lawyerly methods of precedent-based discursive analysis.

Walker died only a year after the *Appeal* was published, under circumstances that many considered suspicious.²⁰² Whether or not the virulence of his writing became the occasion for his early death, the pamphlet's impact on the American public was swift.²⁰³ Widely read in the North, the *Appeal* was disseminated through the Southern coastal region with the assistance of black (and some white) sailors and ship's crewmen from Boston.²⁰⁴ An underground system of circulation and the practice of reading aloud to groups of illiterate slaves extended the *Appeal*'s reach.²⁰⁵ The *Appeal* was believed to have sparked slave resistance in North Carolina in 1830, abetted by clergy or other, self-styled men of God from the region.²⁰⁶ In response, authorities in Georgia and North Carolina placed free blacks arriving on ships in quarantine during their stay in the South. Georgia adopted a law forbidding the teaching of reading or writing to free or enslaved blacks, and North Carolina and Louisiana passed similar laws that applied to slaves. Georgia, North Carolina, and Mississippi criminalized the circulation of works with an anti-slavery message. Persons suspected of distributing the *Appeal* in Charleston, South Carolina, and New Orleans were arrested.²⁰⁷ The mayor of Savannah asked Boston's Mayor Otis to seize the pamphlet and thus stymie its circulation. Although he had publicly disapproved of the *Appeal*'s message, Otis replied that Walker had breached no state law that would justify such an extreme measure.²⁰⁸

Posthumously, Walker's work received respectful treatment in William Lloyd Garrison's *Liberator*,²⁰⁹ and Walker is credited with influencing the structure and approach of Garrison's own book, *Thoughts on African Colonization*, in which Garrison turned the public rhetoric of the American Colonization Society into the basis for his critique of the Society's stance.²¹⁰ Whether Walker's *Appeal* was a catalyst for Nat Turner's slave rebellion in Virginia in

1831 is unknowable, although historian Vincent Harding has emphasized that Turner was driven by the same consciousness of a providential force that animated the *Appeal*.²¹¹ As the abolitionist movement gained in momentum, Walker's sense of aggrievement and call to action were invoked in Henry Highland Garnet's inflammatory "Address to the Slaves of the United States," delivered at the Negro Convention in Buffalo, New York in 1843, and published five years later with the *Appeal*.²¹² With its vigorous language and passionate tone, the *Appeal* helped to illuminate a more extensive range of expressive possibilities for black literature that resonated among antebellum writers as well as among black intellectuals in the late nineteenth century and the twentieth century.²¹³

"COME LET US PLEAD OUR CAUSE BEFORE THE WHITES": MARIA STEWART'S LAWYERLY PROSE²¹⁴

An early figure in the black feminist tradition,²¹⁵ and recognized as the first American woman to give a public political lecture to a mixed audience of men and women,²¹⁶ Maria Stewart worked within the framework of David Walker's call for solidarity and self-help.²¹⁷ In her abbreviated public career in Boston, uncommon as it was at that time for a woman, and, in particular, a black woman,²¹⁸ Stewart emphasized, as Walker had, that education and self-improvement were essential for blacks to achieve genuine progress.²¹⁹ Stewart also carried forward Walker's vigorous idiom and tonality of challenge. Both Stewart and Walker used the characteristic features of the black jeremiad, combining Old Testament allusions with reasoned argumentation and admonition,²²⁰ and both manipulated the conventions of the spoken address.²²¹ For all of these reasons, Stewart occupies a place on the rhetorical continuum between Hall and Walker, although closer to Walker.

Widowed after three years of marriage to a local businessman who had served in the War of 1812,²²² Stewart addressed middle-class black audiences in a series of lectures before sororal and fraternal societies.²²³ The publication of her tract *Religion and the Pure Principles of Morality*, by William Lloyd Garrison, and the re-publication of her addresses in Garrison's *Liberator*, secured a public forum for her ideas about self-help, the need for education, and the corrosive effects of racism.²²⁴ A person of strong religious faith, Stewart drew liberally on biblical sources.²²⁵ Emphasizing education, she urged her black

audience to cast off passivity and “turn their attention to knowledge and improvement; for knowledge is power.”²²⁶ Only through such steps, she reasoned, would it be possible to demonstrate their cultural integrity and constitute themselves as a people.²²⁷ She issued challenges—to the black community as well as whites—and recurred to the Revolutionary-era discourse of rights. By encouraging her audience to plead causes and assert rights, Stewart reinforced the rhetorical practices associated with a legal culture—seeking the redress of grievances through legal institutions.

Thus, Stewart’s writing resonated with the discursive traditions of the law as much as those of religion. The concluding section of *Religion and the Pure Principles of Morality*, her first major work, is illustrative:

Possess the spirit of independence. The Americans do, and why should not you? Possess the spirit of men, bold and enterprising, fearless and undaunted. Sue for your rights and privileges. Know the reason that you cannot attain them. Weary them with your importunities. You can but die if you make the attempt; and we shall certainly die if you do not.²²⁸

Here, Stewart demonstrated her own recourse to the modalities and rhetoric of the law. Exhorting and expostulating with the black community, she combined a peremptory tone, vigorous idiom, and rhythmic repetition of language in the tradition of spoken performance²²⁹—a tradition equally consonant with religious preaching²³⁰ and lawyerly persuasion. In this way, she emphasized the importance of strategies for self-improvement, and the need for solidarity:

The Americans have practised nothing but head-work these 200 years, and we have done their drudgery. And is it not high time for us to imitate their examples, and practise head-work too, and keep what we have got, and get what we can? We need never to think that anybody is going to feel interested for us, if we do not feel interested for ourselves.²³¹

Modeling the practice of legal argumentation, she combined an appeal to logic with an artful use of cadence and repetition (“keep what we have got, and get what we can,” “interested for us/interested for ourselves”). Here, the medium itself had merged with the message.

This melding of expressive medium and content was characteristic of Stewart’s approach. In a series of hortatory addresses delivered in Boston

during the early 1830s, Stewart adopted a discourse of rights as both the substantive basis for equality of treatment for blacks and the rhetorical mode of her address. In a lecture at Franklin Hall, the venue for meetings of the New England Anti-Slavery Society, Stewart took up the anticolonizationist cause in the language of legal assertion:

I observed a piece in the *Liberator* a few months since, stating that the colonizationists had published a work respecting us, asserting that we were lazy and idle. I confute them on that point. Take us generally as a people, we are neither lazy nor idle; and considering how little we have to excite or stimulate us, I am almost astonished that there are so many industrious and ambitious ones to be found . . . Again, it was asserted that we were "a ragged set, crying for liberty." I reply to it, the whites have so long and so loudly proclaimed the theme of equal rights and privileges that our souls have caught the flame also, ragged as we are.²³²

Signifying on the language quoted from the *Liberator*, Stewart identified the source of the cries for liberty in "the whites." Invoking Revolutionary-era discourse, and savoring the irony, she linked the calls of blacks for equality to white colonists' demands for "equal rights." She appropriated and revised "ragged set," used in white discourse as an appellation of contempt, to highlight that "ragged" blacks, no less than whites, were animated by the prospect of possessing rights.

"Confuting" and "replying" to the assertions of white colonizationists, Stewart, as Prince Hall had done, used repetition in framing the interrogative mode to develop a reasoned analysis of the importance of self-help:

Did the pilgrims, when they first landed on these shores, quietly compose themselves and say, "The Britons have all the money and all the power, and we must continue their servants forever?" Did they sluggishly sigh and say, "Our lot is hard, the Indians own the soil, and we cannot cultivate it?" No; they first made powerful efforts to raise themselves, and then God raised up those industrious patriots, WASHINGTON and LAFAYETTE, to assist and defend them. And my brethren, have you made a powerful effort? Have you prayed the legislature for mercy's sake to grant you all the rights and privileges of free citizens, that your daughters may rise to that degree of respectability which true merit deserves, and your sons above the servile stations which most of them fill?²³³

Repeating "raising" and "powerful effort," Stewart shifted from the language of rights assertion to the substance of the rights inherent in the status of "free

citizens." Stewart similarly underlined the theme of substantive rights in an address delivered the following year at the African Masonic Hall, using patterns of couplets ("fear/servitude," "force/energy," "nobly/boldly") and repetition of language for emphasis:

Continual fear and laborious servitude have in some degree lessened in us that natural force and energy which belongs to man; or else, in defiance of opposition, our men, before this, would have nobly and boldly contended for their rights. But give the man of color an equal opportunity with the white from cradle to manhood, and from manhood to the grave, and you would discover the dignified statesman, the man of science, and the philosopher. But there is no such opportunity for the sons of Africa, and I fear that our powerful ones are fully determined that there shall never be . . . O, ye sons of Africa, when will your voices be heard in our legislative halls, in defiance of your enemies, contending for equal rights and liberty?²³⁴

Urging her audience to pursue temperance and education, and "contend for the cause of God and rights of man," Stewart linked the issue of equal opportunity to a capacity to assert these natural rights: "Had we as a people received one-half the early advantages the whites have received, I would defy the government of the United States to deprive us any longer of our rights."²³⁵ Echoing Walker's more ominous tones as well as his use of the theme of providence, Stewart held out the prospect that blacks will "have their rights; and if refused, I am afraid they will spread horror and devastation around . . . and when our cries shall have reached the ears of the Most High it will be a tremendous day for the people of this land, for strong is the hand of the Lord God Almighty."²³⁶

Embedding the recourse to rights within a tradition of providential deliverance, Stewart's approach recalled *Religion and the Pure Principles of Morality*. Forecasting a disastrous end to white domination in language richly resonant with the Bible, Stewart alluded, as she did throughout her work, to the Old Testament (the reference to the ten plagues) and to New Testament sources (the forecast of destruction invoking the tone and imagery of the Book of Revelations):²³⁷

Oh, America, America, foul and indelible is thy stain! Dark and dismal is the cloud that hangs over thee, for thy cruel wrongs and injuries to the fallen sons of Africa. The blood of her murdered ones cries to heaven for vengeance against thee . . . You may kill, tyrannize, and oppress as much as you choose, until our

cry shall come up before the throne of God; for I am firmly persuaded, that he will not suffer you to quell the proud, fearless and undaunted spirits of the Africans forever; for in his own time, he is able to plead our cause against you, and to pour out upon you the ten plagues of Egypt.²³⁸

Melding legal and religious traditions, the divine intervention she imagined was the “speech act”²³⁹ of a lawyer pleading the cause of the black community.

Recognizing that lawyers’ language, in speech-act terms, is always subject to being disrupted, questioned, and contested, legal pleaders must use a variety of techniques that can convey, imply—and even allow for a retreat from—a particular meaning.²⁴⁰ Stewart’s language suggests this lawyerly multiresonance. Despite undeniable moments of menace in the passage, Stewart cloaked this challenge to white Americans in biblical terms with which her readership—white and black—would be well familiar: her dire forebodings reflected the righteous anger of an avenging God, of which there was ample warning in Scripture.²⁴¹ By this rhetorical distancing, Stewart was able to modulate the threatening potential of her language, and deflect direct responsibility for any violent eventuality from the black community.

In this respect, Stewart’s work recalls, in a more developed form, Prince Hall’s use of subtlety and irony in engaging a critique of white society. However, Stewart’s language and tonality, more consistently than Hall’s, communicated tenacity and forthrightness, placing her squarely within the conventions of advocacy. Her expression solidified the connection between black cultural production and legal discourse suggested in Hall’s addresses. And if Stewart’s work never reached the level of virulence of Walker’s polemics, the continuities between their production were marked. Stewart closed the public portion of her career after only three years. This quotation from her farewell address in 1833 suggests some of the difficulties she faced as a black woman in the public sphere: “Had experience more plainly shown me that it was the nature of man to crush his fellow, I should not have thought it so hard. Wherefore, my respected friends, let us no longer talk of prejudice till prejudice becomes extinct at home. Let us no longer talk of opposition, till we cease to oppose our own.”²⁴²

She spent the next forty years as a teacher, in New York, Brooklyn, Baltimore, and Washington, D.C., and in the 1870s worked as a matron, and, in effect, an exemplar, in the Freedman’s Hospital in Washington, as Sojourner Truth had done at another Freedman’s facility.²⁴³ In 1879, the year of her death,

Stewart used the proceeds of a widow's pension to subsidize the publication of a new edition of her writings, augmented by an account of her later years.²⁴⁴ The volume was introduced by correspondence from friends and public figures, including her former publisher, William Lloyd Garrison, who recalled that her "whole adult life has been devoted to the noble task of educating and elevating your people, sympathizing with them in their affliction, and assisting them in their needs."²⁴⁵

Rhetorically, Stewart served as a link to abolitionist discourse of the 1830s and 1840s, a discourse that increasingly recurred to the language of rights and legal pleading. This included Hosea Easton's lawyerly argument, written in 1837, deriving a basis for equal civil rights for blacks in the "original agreement of the contracting parties"—the severing of relations with Britain, and the loss of a basis in law for recognizing slavery—and the citizenship rights articulated in the Declaration of Independence;²⁴⁶ Frederick Douglass's assertion of rights on behalf of black people in the inaugural edition of his newspaper, the *North Star*, in 1847 ("[*The North Star*] shall fearlessly assert your rights, faithfully proclaim your wrongs and earnestly demand for you instant and evenhanded justice.");²⁴⁷ and William Watkins's petition to a Massachusetts legislative committee seeking a charter for an independent black military unit:

"WHY SHOULD THIS PETITION BE GRANTED? *It should be granted because the request is a reasonable one, and one emanating from a body of men who have an absolute right to demand it . . . We are men, and we wish to be treated, as men in the land of the Pilgrims should be treated. . . . Give us our rights.*"²⁴⁸

A pathbreaking public rhetor, Maria Stewart's contributions to black abolitionist discourse secured its association with the lawyerly features that were so serviceable to a project of protest and assertion of rights.

CONCLUSION: "WHAT IS THE ROLE OF THE (LAWYER'S) WORD?"²⁴⁹

In the formative years of the national abolitionist movement, Prince Hall, David Walker, and Maria Stewart produced texts that invoked Revolutionary-era discursive traditions of public legal challenges to slavery and racial inequality—strategic marshalling of facts, use of narrative, reasoned elucidation

of argument, questioning of the status quo, and a characteristic tonality of challenge. Each understood that the law's primacy as a category for ordering social relations, and its claim to moral authority, gave its forms and expressive practices a distinct rhetorical value. The law's discursive method offered a paradigm for cultural expression because its language was so completely implicated in the substantive rights that the law purported to guarantee. In using law's public language as a literary practice, early black abolitionist discourse drew attention to the gulf between precept and practice, and articulated the rationale for changing that practice. In black Americans' aspiration to achieve (even formal) equality under law, the lawyer's word offered a rhetoric of empowerment, a way of naming, and overcoming, their experience of irony.

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1. I use "African American" with some reservation; first, because it is not an appellation that black people in the antebellum period appear to have adopted for themselves, and, second, because it may mislead by suggesting that the black population conceived of itself as undergoing a process of assimilation. In fact, David Walker and Maria Stewart, two of the early abolitionist writers whose works I examine in this article, distinguished between their black audiences and "the Americans." See, for example, text accompanying *infra* notes 169, 187, and 194 (Walker), and *infra* notes 228 and 231 (Stewart). Thus, I have used the term "black" more frequently here.
2. James Boyd White, *Heracles' Bow: Essays on the Rhetoric and Poetics of the Law* (Madison: University of Wisconsin Press, 1985), xi.
3. In this article, references to "text" include petitions to legislative bodies and, for suits challenging an individual slave's status, the recognized theories of relief under which the lawsuits were initiated, the supporting rationales in arguments of counsel, and the rule and reasoning articulated in judicial opinions that considered these claims.
4. Robert A. Ferguson, "The Rhetorics of the Judicial Opinion: The Judicial Opinion as Literary Genre," 2 *Yale Journal of Law & Humanities* 201, 208–10 (1990). Focusing attention on the interrogative mode in the judicial opinion, Robert Ferguson illustrates how the process of judicial decision making involves discovering the question that will dispose of the contested case. Raising a series of questions—or progressively redefining the question for decision—makes it possible to elaborate a line of argument, which judges do as much as the advocates who appear before them. *Id.* at 208–9. In this article, I address uses of the interrogative mode in advocacy, both in law and in the literature that grew out of the legal culture of eighteenth-century Massachusetts, particularly Boston.

5. Writing with a particular focus on the ways in which black American literature has been addressed to law, Jon-Christian Suggs has suggestively written that the relationship between African American narrative and law is one of signifying—using Henry Louis Gates, Jr.'s, formulation of that concept—in the sense that African American/black narrative reads through and comments upon the narrative of American law, with the result that a third text, a new meaning, is derived. Jon-Christian Suggs, *Whispered Consolations: Law and Narrative in African American Life* (Ann Arbor: University of Michigan Press, 2000), 10. Suggs's suggestion that the relation between black American literature and law is intertextual is a helpful way to characterize a central focus of this article, when it takes up the concept of signifying in David Walker's engagement with Thomas Jefferson's writings.
6. Vincent Harding, *There Is a River: The Black Struggle for Freedom in America* [1981] (New York: Vintage Books, 1983), 82.
7. Suggs, *supra* note 5 at 11.
8. *Id.*, at 1, 100–101.
9. As literary scholar Elizabeth McHenry has noted in her study of the reading practices among the black middle class and upper class in northern cities from 1830 through 1940, to write of a unitary "black community" would be to ignore the variations and complex social formations that have always existed among American blacks. Elizabeth McHenry, *Forgotten Readers: Recovering the Lost History of African American Reading Societies* (Durham, NC: Duke University Press, 2002), 15–17. The attribution of "voice" to Boston's black inhabitants in the late eighteenth and early nineteenth century thus does not assume that these black Bostonians were homogeneous, either in terms of occupation, education level, ideology, or affiliations. See, for example, James Oliver Horton and Lois E. Horton, *Black Bostonians: Family Life and Community Struggle in the Antebellum North* (New York: Holmes & Meier, 1979), 1–13; and George Levesque, *Black Boston: African American Life and Culture in Urban America, 1750–1860* (New York: Garland, 1994), 88–107, 111–28.
10. Peter P. Hinks, "Editor's Note: The Three Editions of the Appeal," in *David Walker's Appeal to the Coloured Citizens of the World*, Peter P. Hinks, ed. (University Park, PA: Penn State University Press, 2000), xlv. Hinks notes the thematic elaboration and intensification of rhetoric in each successive edition (xlv–li).
11. See, for example, the discussion of views in Peter P. Hinks, *To Awaken My Afflicted Brethren: David Walker and the Problem of Antebellum Slave Resistance* (University Park, PA: Penn State University Press, 1997), 167–69. See also Harding, *supra* note 6 at 84, 87–89, noting the "affinity" between Walker's and Turner's religiously based motivations, notwithstanding the absence of evidence that Turner may have been aware of the *Appeal* (*id.*, at 94).
12. Thomas C. Holt, "Afterword: Mapping the Black Public Sphere," in *The Black Public Sphere*, The Black Public Sphere Collective, ed. (Chicago: University of Chicago Press, 1995), 326–27. As Holt points out, the notion of a black public sphere in the Habermasian sense could not apply seamlessly to antebellum American blacks, given the lack of available information and organizational networks by which "politically viable speech communities" could develop (327). Nonetheless, as this article will attempt to show, free blacks in antebellum Boston did create public discourse and media through which a politically energized speech could circulate.
13. The quoted text is from a petition to the Massachusetts colonial legislature, May 1774. See *infra* note 75 and accompanying text.
14. See Gary B. Nash, *Race and Revolution* (Madison, WI: Madison House, 1990), 58; and Morris L. Cohen, "Legal Literature in Colonial Massachusetts," in *Law in Colonial Massachusetts 1630–1800*, proceedings of a conference held 6 and 7 November 1981 by The Colonial Society of Massachusetts, 243–72 (Boston: The Colonial Society of Massachusetts, 1984), 272.
15. See, for example, [Daniel Leonard] Massachusettensis, "To All Nations of Men, Boston 1773," in *American Political Writing during the Founding Era, 1760–1805*, vol. 1, Charles S. Hyneman and Donald S. Lutz, eds., 209–16 (Indianapolis: Liberty Press, 1983), 211, raising a series of anaphoric questions con-

- cerning the British: "Have they not actually invaded the freedom of our persons pretending to bind us by laws to which our consent was never so much as asked? Have they not demanded our money at the point of the bayonet and mouth of the cannon? Have they not utterly subverted the free constitution of our state . . . ?" (emphasis added); and Samuel West, "On the Right to Rebel against Governors, Boston 1776," in *American Political Writing*, *id.*, 410–48 at 437, using the language of interrogation and reasoned argument to catalogue legal grievances: "Need I upon this occasion descend to particulars? Can any one be ignorant what the things are of which we complain? Does not every one know that the King and Parliament have assumed the right to tax us without our consent?"
16. Benjamin Quarles, "The Revolutionary War as a Black Declaration of Independence," in *Slavery and Freedom in the Age of American Revolution*, Ira Berlin and Ronald Hoffman, eds., 283–301 (Charlottesville: University of Virginia Press, 1983), 290; Nash, *supra* note 14 at 58, 65–66; and Arthur Zilversmit, *The First Emancipation: The Abolition of Slavery in the North* (Chicago: University of Chicago Press, 1967), 101–2.
 17. Celeste M. Condit and John L. Lucaites, *Crafting Equality: America's Anglo-African Word* (Chicago: University of Chicago Press, 1993), 37.
 18. Among the American colonies, Massachusetts was perhaps the least restrictive legal environment for the black population, free or enslaved. By mid-eighteenth century, evidence of public antipathy toward slavery and the slave trade seemed fairly widespread. Beginning in the 1750s, for example, numerous towns in Massachusetts sought action by the colonial legislature to eliminate these institutions. Zilversmit, *supra* note 16 at 100. In 1780, after a preponderance of the towns voted to reject an earlier version of a state constitution which had excluded "Negroes, Indians, and Mulattoes" from the electorate and which lacked a declaration of rights, a constitutional convention approved a revised charter containing such a declaration and granting all men the right to vote and seek office, regardless of color. A. Leon Higginbotham, Jr., *In the Matter of Color: Race and the America Legal Process* (New York: Oxford University Press, 1978), 89, 90.
 19. *Id.*, at 86, 99.
 20. Lorenzo Johnston Greene, *The Negro in Colonial New England* [1942] (New York: Columbia University Press, 1945), 169, 172, 174.
 21. *Id.*, at 177, 182.
 22. *Id.*, at 177.
 23. *Id.*, at 179, 182.
 24. *Id.*, at 179–81.
 25. *Id.*, at 182.
 26. *Id.*, at 179.
 27. *Id.*, at 183.
 28. Zilversmit, *supra* note 16 at 103.
 29. Greene, *supra* note 20 at 183; Quarles, *supra* note 16 at 290; and Kinvin L. Wroth and Hillier B. Zobel, eds, *Legal Papers of John Adams*, vol. 2 (Cambridge, MA: Belknap Press of Harvard University Press, 1965), 49.
 30. Wroth and Zobel, *id.*
 31. Higginbotham, *supra* note 18 at 84.
 32. William E. Nelson, "Court Records as Sources for Historical Writing," in *Law in Colonial Massachusetts, 1630–1800*, proceedings of a conference held 6 and 7 November 1981 by The Colonial Society of Massachusetts, 499–518 (Boston: The Colonial Society of Massachusetts, 1984), 508–9.
 33. The slave-plaintiffs argued the applicability of rules of procedure or evidence as well as posing broader challenges to the legitimacy of slavery itself. Zilversmit, *supra* note 16 at 103–4; and Wroth and Zobel, *supra* note 29.
 34. Zilversmit, *supra* note 16 at 103.
 35. "Wetmore's Minutes of the Trial," in Wroth and Zobel, *supra* note 29 at 59–60 and Wroth and Zobel, *supra* note 29 at 51.

36. "Wetmore's Minutes of the Argument," in Wroth and Zobel, *id.*, at 61. In addition to advancing straightforward contract principles, John Lowell, Caesar's counsel, argued that no law enslaving an individual could be valid, as it violated the "Laws of God and reason." "Wetmore's Minutes of the Trial," in Wroth and Zobel, *id.*, at 59–60. Available records do not disclose the influence, if any, of this species of natural-rights theory on the judges' conceptualization of the issue. Nonetheless, the presiding bench did permit introduction of evidence that tended to establish that Taylor had agreed to allow Caesar to purchase his freedom, and that a subsequent owner had mistreated Caesar. "Wetmore's Minutes of the Argument," in Wroth and Zobel, *id.*, at 60–61 and Wroth and Zobel, *id.*, at 51. The jury, acting as the trier of fact, found in favor of Caesar, awarding him money damages and costs. Wroth and Zobel, *id.*, at 51.
37. "Adams's Minutes of the Argument," in Wroth and Zobel, *id.*, at 54.
38. *Id.*, at 55. Judge Oliver, one of Cushing's colleagues on the court, had adopted a more philosophical conception of the dispute: "This is a Contest between Liberty and Property—both of great Consequence, but Liberty of most importance of the two," *id.*, at 54. Whichever view of the case prevailed, the court allowed Slew to maintain the trespass action. As in *Caesar v. Taylor*, ultimately the case went to a jury, which found in Slew's favor. Wroth and Zobel, *id.*, at 49.
39. Wroth and Zobel, *id.*, at 52.
40. The case originated in Essex Inferior Court, Newburyport, in October 1773. "Wetmore's Minutes of the Trial," Wroth and Zobel, *id.*, at 64.
41. *Id.*
42. *Id.*, at 65. Lowell argued that enslavement was incompatible with Caesar's execution of his responsibilities as a Christian.
43. *Id.*
44. *Id.*, at 66.
45. *Id.*, at 65.
46. *Id.*
47. *Id.*, at 66.
48. *Id.*, at 65.
49. Wroth and Zobel, *id.*, at 52.
50. Walker began a proceeding against Jennison, his master, for assault and battery, resulting from Jennison's attempt to recapture Walker after the latter had run away from Jennison's farm. In June 1781, Walker recovered money damages upon the jury's determination that he was a free man. Jennison then instituted suit against the owners of a neighboring farm, claiming that they had encouraged Walker to abandon him. The trial jury found in Jennison's favor, but this determination was reversed on appeal to the Supreme Judicial Court. Levi Lincoln, counsel for the defendants, framed the issue as one that transcended local law: "Is not a law of nature that all men are equal and free. Is [*sic*] not the laws of nature the laws of God? Is not the law of God then against slavery." Higginbotham, *supra* note 18 at 92–93.
51. *Id.*, at 93.
52. *Id.*
53. *Id.*, at 95.
54. Massachusetts Constitution of 1780, Article One, etc. as cited in Higginbotham, *supra* note 18 at 90.
55. *Id.*, at 95.
56. *Id.*, at 94.
57. *Id.*
58. *Id.*, at 99.
59. *Id.*, at 96–97.
60. Nash, *supra* note 14 at 58, 65; and Higginbotham, *supra* note 18 at 86.
61. Nash, *id.*, at 66.
62. Higginbotham, *supra* note 18 at 89; Greene, *supra* note 20 at 302; and Quarles, *supra* note 16 at 298–99.

63. Nash, *supra* note 14 at 66–67.
64. *Id.*, at 58; Zilversmit, *supra* note 16 at 110.
65. Robert Ferguson's illuminating investigation of the uses of genre theory in the study of legal discourse, *supra* note 4, offers a model for my analysis of the petitions as both legal and literary documents.
66. Quarles, *supra* note 16 at 290; and Nash, *supra* note 14 at 58–59.
67. "Petition: Province of The Massachusetts Bay To His Excellency Thomas Hutchinson, Esq. Governor; To The Honorable His Majesty's Council, and To The Honorable House of Representatives in General Court assembled at Boston, the 6th day of January, 1773" in *A Documentary History of the Negro People in the United States from Colonial Times Through the Civil War* [1951], Herbert Aptheker, ed. (New York: Citadel Press, 1969), 6. Hereinafter cited as *History of the Negro People*.
68. *Id.*, at 6.
69. The jeremiad was a genre that drew on biblical conventions combining lamentation over current conditions and admonition to enslavers that they would face divine punishment. William L. Andrews, *To Tell a Free Story: The First Century of Afro-American Autobiography* (Urbana: University of Illinois Press, 1986), 14, 123.
70. "Petition," *History of the Negro People*, *supra* note 67.
71. *Id.*, at 7.
72. *Id.*
73. Nash, *supra* note 14 at 58; Condit and Lucaites, *supra* note 17 at 42.
74. Condit & Lucaites, *id.* For example, in a petition to the legislature dated April 1773, the four authors asserted with some confidence that they "cannot but expect your house will again take our deplorable case into serious consideration, and give us that ample relief which *as men*, we have a natural right to" (emphasis in original). With an increasing firmness of tone, the writers indicated that they "are willing to submit" to local laws, but only until they can afford to remove themselves from Massachusetts and relocate to the African coast, "which we determine to do," "Petition of Boston, April 20, 1773," in *History of the Negro People*, *supra* note 67 at 7, 8.
75. "Petition To His Excellency Thomas Gage, Esq. Captain General and Governor in Chief in and over this Province To The Honorable his Majesty's Council and The Honourable House of Representatives in General Court assembled May 25, 1774," in *History of the Negro People*, *supra* note 67 at 8–9.
76. *Id.*, at 9.
77. *Id.*
78. Condit and Lucaites, *supra* note 17 at 85–86. The petition bears eight signatures, including Prince Hall's. See Charles H. Wesley, *Prince Hall: Life and Legacy* (Washington: United Supreme Council Southern Jurisdiction Prince Hall affiliation, 1977), 64.
79. Zilversmit, *supra* note 16 at 110.
80. Quarles, *supra* note 16.
81. "Petition To The Honorable Counsel & House of [Representa]tives for the State of Massachusetts Bay in General Court assembled, January 13, 1777," in *History of the Negro People*, *supra* note 67 at 10.
82. *Id.*
83. Condit and Lucaites, *supra* note 17 at 37.
84. White, *supra* note 2 at 35, 78.
85. Condit and Lucaites, *supra* note 17 at 76–77.
86. The quoted text is from "A Charge Delivered to the Brethren of the African Lodge on the 25th of June, 1792" in Dorothy Porter, ed., *Early Negro Writing, 1760–1837* (Boston: Beacon Press, 1971).
87. Zilversmit, *supra* note 16 at 114; and Higginbotham, *supra* note 18 at 91, 93–94.
88. As in all the colonies, the community of blacks in Massachusetts did not enjoy parity under the law with Anglo-Americans or other inhabitants of European stock. Free blacks suffered various civil disabilities: they were unable to serve in the militia, were barred from certain kinds of property ownership, and were subject to curfew. Greene, *supra* note 20 at 303, 299.

89. In addition to *de facto* discrimination in hiring black labor, discriminatory animus was institutionalized in statutes barring the free black community from engaging in various kinds of gainful employment. Greene, *supra* note 20 at 299; and Higginbotham, *supra* note 18 at 98.
90. Greene, *supra* note 20 at 304.
91. Condit and Lucaites, *supra* note 17 at 48, 59, 61–62.
92. Nash, *supra* note 14 at 80.
93. The founding documents created by community organizations demonstrated this affinity to the law. Elizabeth McHenry (*supra* note 9 at 44) describes the practice by which Free African mutual-aid societies drew on the discursive frameworks of the charters of the new nation by incorporating preambles and articles into the constitutions of these societies.
94. Benjamin Brawley, ed., *Early Negro American Writers* (Chapel Hill: University of North Carolina Press, 1935), 96.
95. Maurice Wallace, "'Are We Men?': Prince Hall, Martin Delany, and the Masculine Ideal in Black Freemasonry, 1775–1865," in *National Imaginaries, American Identities: The Cultural Work of American Iconography*, Larry J. Reynolds and Gordon Hutner, eds. (Princeton, NJ: Princeton University Press, 2000), 185. Charles Wesley, Hall's biographer, has drawn attention to a manumission document suggesting that Hall may have been born into slavery. Wesley, *supra* note 78 at 14. Although an oft-repeated account of his origins in the West Indies has been placed in question, and the pictorial representation of Hall that appeared in a 1903 history of freemasonry is thought to be inauthentic (Wallace, *id.*, at 186–88), Hall's participation in public life was substantial and made him an influential figure and paragon of black manhood (*id.*, at 185, 190).
96. See, for example, Brawley, *supra* note 94; Porter, *supra* note 86; and Dickson D. Bruce, Jr., *The Origins of African American Literature, 1680–1865* (Charlottesville: University Press of Virginia, 2001).
97. Nash, *supra* note 14 at 65; Wesley, *supra* note 78 at 4, 64.
98. Bruce, *supra* note 96 at 82; and Wesley, *id.*, at 66, 68–69, 76–77.
99. Wallace, *supra* note 95 at 183–84; and Wesley, *id.*, at 3.
100. Wallace, *id.*
101. Wesley, *supra* note 78 at 76.
102. *Id.*, at 68–69, 71; and McHenry, *supra* note 9 at 38.
103. Prince Hall, "A Charge Delivered to the Brethren of the African Lodge on the 25th of June, 1792, at the Hall of Brother William Smith in Charlestown," in *Early Negro Writing, 1760–1837*, *supra* note 86 at 64.
104. *Id.*, at 67.
105. *Id.*, at 68.
106. Wesley, *supra* note 78 at 4. Instead, Hall and several others were "clandestinely" admitted to an Irish military lodge under the auspices of the Grand Lodge of Ireland that was attached to the British army in Boston in 1775. *Id.*, at 34, 44–45, 51.
107. *Id.*, at 31–33.
108. *Id.*, at 42–43; and Nash, *supra* note 14 at 66–67.
109. Wesley, *supra* note 78 at 76.
110. Prince Hall, "A Charge, Delivered to the African Lodge, June 24, 1797, at Mentomy," in *Early Negro Writing, 1760–1837*, *supra* note 86 at 71.
111. See text accompanying *supra* note 76 at 103.
112. See Mary P. Hiatt, *Artful Balance: The Parallel Structure of Style* (New York: Teachers College Press, Columbia University, 1975), 5, 59, defining rhetorical antithesis as "juxtaposition of contrasting or opposing ideas."
113. For a discussion of the persuasive emphasis achieved through parallelism, often in conjunction with rhetorical figures involving repetition, see *id.*, 5–6, 11, 18, 124–25.
114. Hall, *supra* note 110 at 72–73.

115. *Id.*, 73–74.
116. Bruce, *supra* note 96 at 83–85.
117. Hall, *supra* note 110 at 74.
118. Discussing the prevalence of religious themes in late eighteenth-century black literature, Dickson Bruce has shown that this invocation of Acts 10:34, referring to the equality of all persons before the eyes of God, would be familiar to a black audience and appreciated as an expression of solidarity and community. Bruce, *supra* note 96 at 77–78.
119. The Declaration of Independence, in *Great Issues in American History: From Settlement to Revolution, 1584–1776*, Clarence L. Ver Steeg and Richard Hofstadter, eds. (New York: Vintage Books, 1958), 469.
120. Porter, “Part V, Spokemen in Behalf of Their ‘Colored Fellow Citizens,’ 1787–1815” in *supra* note 86 at 309.
121. Condit and Lucaites, *supra* note 17 at 77.
122. *Id.*, at 63–64.
123. *Id.*, at 63; and Marilyn Richardson, “Introduction to Part I,” in *Maria W. Stewart, America’s First Black Woman Political Writer*, Marilyn Richardson, ed. (Bloomington: Indiana University Press, 1987), 6, 126n66. Hereinafter cited as *Stewart*.
124. Condit and Lucaites, *supra* note 17 at 67; Greene, *supra* note 20 at 306–7; and Horton and Horton, *supra* note 9 at 89–90.
125. Condit and Lucaites, *id.*, at 67.
126. *Id.*, at 77–78.
127. The quotation is from article 4 of David Walker, *David Walker’s Appeal*, with an introduction by Charles W. Wiltse (New York: Hill and Wang, 1965), 70. All citations to the *Appeal* are from the third edition.
128. Hinks, *supra* note 11 at 66–70, 75–76; and Richardson, *supra* note 123 at 5–6.
129. Hinks, *id.*, at 76, 78–79; and Horton and Horton, *supra* note 9 at 50.
130. Hinks, *id.*, at 69–73, 75–76.
131. *Id.*, at 75, 102.
132. David Walker, in McHenry, *supra* note 9 at 39.
133. Hinks, *supra* note 11 at 93, 105; and McHenry, *id.*, at 38.
134. Harding, *supra* note 6 at 83.
135. *Id.*, at 82.
136. *Id.*, at 84.
137. Hinks, *supra* note 11 at 198–212.
138. *Id.*, at 158–60; and McHenry, *supra* note 9 at 34–37.
139. Herbert Aptheker, “One Continual Cry”: *David Walker’s Appeal to the Coloured Citizens of the World, 1829–1830* (New York: Humanitarian Press, 1965), 45–49.
140. When Jefferson did credit blacks with superior skill, his view reflected a stereotypical perception of blacks as performers, who have “accurate ears for tune and time.” Thomas Jefferson, “Query XIV,” *Notes on the State of Virginia*, in *Writings*, Merrill D. Peterson, ed., 123–325 (New York: Literary Classics of the United States, 1984), 263–66. Concluding that the “unfortunate difference of colour, and perhaps of faculty, is a powerful obstacle to the emancipation of these people,” Jefferson recommended that any black slaves who were liberated should be “removed beyond the reach of mixture” with the blood of whites. *Id.*, at 270.
141. Robert A. Ferguson, *Law and Letters in American Culture* (Cambridge, MA: Harvard University Press, 1984), 38–39, 42, 44, 47, 51.
142. Joseph J. Ellis, *American Sphinx: The Character of Thomas Jefferson* (New York: Vintage Books, 1996), 101–2.
143. Jefferson, *supra* note 140 at 264–70.
144. Henry Louis Gates, Jr., *The Signifying Monkey: A Theory of African-American Literary Criticism* (New York: Oxford University Press, 1988), 66, 113.

145. *Id.*, at 49; and Jefferson, *Notes on the State of Virginia*, *supra* note 140 at 263.
146. Ellis, *supra* note 142 at 174.
147. Jefferson, *Notes on the State of Virginia*, *supra* note 140 at 264.
148. Walker, *supra* note 127 at 22.
149. *Id.*, at 24–25.
150. Ferguson, *supra* note 141 at 37–38, 43, 52.
151. Richard Barksdale and Keneth Kinnamon, *Black Writers of America: A Comprehensive Anthology* (New York: MacMillan, 1972), 151–52.
152. Walker, *supra* note 127 at 2.
153. *Id.*, at 11–12.
154. *Id.*, at 25–26.
155. Gates, *supra* note 144 at 66, 106–7, 122–24.
156. Walker, *supra* note 127 at 3–5.
157. *Id.*, at 2.
158. *Id.*
159. *Id.*, at 3.
160. *Id.*, at 3–4.
161. *Id.*, at 5 (emphasis in the original).
162. *Id.*, at 10.
163. Jefferson, *supra* note 140 at 264–66, 268.
164. Walker, *supra* note 127 at 15.
165. *Id.*, at 14.
166. *Id.*, at 15.
167. Peter Hinks notes an 1809 address of William Hamilton to the Society that took up Jefferson's argument that the condition of slavery did not explain blacks' lack of accomplishment, when the achievements of white Roman slaves were considered. Hinks, *supra* note 11 at 178–79. Dickson Bruce, *supra* note 96 at 125–26, refers to an address on the same subject by an unnamed member of the Society in 1815.
168. Hinks, *supra* note 11 at 178.
169. Walker, *supra* note 127 at 16.
170. *Id.*, at 17 (emphasis in the original).
171. Gates, *supra* note 144 at 66.
172. *Id.*, at 124.
173. Walker, *supra* note 127 at 28 (the emphasis is Walker's).
174. *Id.*, at 20.
175. *Id.*, at 25 (emphasis in the original).
176. See *infra* notes 228–31 and accompanying text.
177. Hinks, *supra* note 11 at 199.
178. *Id.*, at 224.
179. *Id.*, at 108, 212–24.
180. Peter P. Hinks, "Introduction," in *David Walker's Appeal to the Coloured Citizens of the World*, *supra* note 10 at xxxviii.
181. Hinks, *supra* note 11 at 209–11.
182. In his application of the public-sphere construct to a black American context, Houston Baker has suggestively described how imagination and emotion work together with reason as key attributes of an "expressive and empowering self-fashioning" of a subaltern black counterpublic. Houston A. Baker, "Critical Memory and the Black Public Sphere," in *The Black Public Sphere*, *supra* note 12 at 12–13, 16. Similarly, Walker's use of emotion, which illuminates and augments the use of his reason in the Habermasian sense (*id.*, at 10) enters and engages a public realm of thought and discussion and illustrates, in

- Baker's terms, "revised notions of how human interactive modes—other than reason alone—bear on publicity" (*id.*, at 14).
183. Walker, *supra* note 127 at 30.
 184. *Id.*, at 30–33.
 185. *Id.*, at 31–32.
 186. *Id.*, at 38–40.
 187. *Id.*, at 42–43.
 188. *Id.*, at 43 (emphasis in the original).
 189. *Id.*, at 46–47, 54–55.
 190. *Id.*, at 75.
 191. Peter Charles Hoffer has drawn attention to the many points of resemblance between the Declaration and the conventions of a bill in equity, a kind of legal pleading which seeks relief on the basis of principles of justice or equitable trusts rather than on common-law grounds. Peter Charles Hoffer, "The Declaration of Independence as a Bill in Equity," in *The Law in America, 1607–1861*, William Pencak and Wythe W. Holt, Jr., eds. (New York: New-York Historical Society, 1989), 196–204.
 192. Walker, *supra* note 127 at 65–66.
 193. *Id.*
 194. *Id.*, at 69–70.
 195. *Id.*, at 75 (emphasis in the original).
 196. See Michael C. Dawson, "A Black Counterpublic? Economic Earthquakes, Racial Agenda(s), and Black Politics," in *The Black Public Sphere*, *supra* note 12 at 206.
 197. *Id.*, at 206–207.
 198. See, for example, text accompanying *supra* notes 162, 169, 183–185, 187.
 199. Condit and Lucaites, *supra* note 17 at 78, 85–86, 88.
 200. Bruce, *supra* note 96 at 182.
 201. Gates, *supra* note 144 at 77.
 202. Although Walker scholar Peter Hinks concludes that Walker likely succumbed to the same consumption that had taken his infant daughter only days before his own death (Hinks, *supra* note 180 at xliv), other scholars had deemed his death to be "mysterious" (Aptheker, *supra* note 139 at 50), or possibly the result of poisoning (Charles M. Wiltse, "Introduction," in Walker, *supra* note 127 at xi).
 203. Wiltse, *id.*, at ix; Richardson, *supra* note 123 at 6; Brawley, *supra* note 94 at 123; and Aptheker, *supra* note 139 at 45–53.
 204. Hinks, *supra* note 180 at xxxix–xli.
 205. Hinks, *supra* note 11 at 160.
 206. *Id.*
 207. Aptheker, *supra* note 139 at 47–48.
 208. Wiltse, *supra* note 202 at x.
 209. Bruce, *supra* note 96 at 187–88; and Hinks, *supra* note 180 at xliii–xliv.
 210. Bruce, *id.*, at 192.
 211. Harding, *supra* note 6 at 94–95.
 212. *Id.*, at 142–43, 151.
 213. In an 1883 address, Frederick Douglass acknowledged Walker's pivotal role in galvanizing the abolitionist movement; and in the essay "Dusk of Dawn," published in 1940, W.E.B. DuBois regarded the *Appeal* as a precursor of the projects designed to advance the political and social status of blacks in America. Hinks, *supra* note 11 at 114–15.
 214. The quotation is from a lecture by Maria W. Stewart, delivered at Franklin Hall, Boston, September 21, 1832, in *Stewart*, *supra* note 123 at 45.
 215. Richardson, "Introduction to Part I," at 19, in *Stewart*, *supra* note 123.

216. Rita Roberts, "Maria Stewart," in *American National Biography*, John A. Garraty and Mark C. Carnes, eds., vol. 20 (New York: Oxford University Press, 1999), 750, 751.
217. Richardson, *supra* note 123 at 11–12.
218. *Id.*, at 15–16. Although it has been suggested that blacks in the nineteenth century accorded black women more leeway to engage in forms of public protest than white society did (Horton and Horton, *supra* note 9 at 66), Stewart's experience appears to have been less sanguine (Richardson, *id.*, at 26–27).
219. Richardson, *id.*, at 6, 14, 17.
220. Andrews, *supra* note 69 at 14.
221. *Id.*
222. Richardson, *supra* note 123 at 3, 7.
223. Elizabeth McHenry examines at length the role of independent black institutions that helped to energize and focus the political consciousness of antebellum middle-class blacks. This included literary societies in which members could enact the very program of uplift that Stewart espoused. See, for example, McHenry, *supra* note 9 at 17–18, 37–39.
224. Bruce, *supra* note 96 at 195–96.
225. Richardson, *supra* note 123 at 6, 8–9, 15, 17.
226. Maria W. Stewart, "An Address Delivered at the African Masonic Hall," 1833, in *Stewart*, *supra* note 123 at 57.
227. Maria W. Stewart, "An Address Delivered Before the Afric-American Female Intelligence Society of America," spring 1832, in *Stewart*, *supra* note 123 at 53, 127n73.
228. Maria W. Stewart, *Religion and the Pure Principles of Morality*, October 8, 1831, in *Stewart*, *supra* note 123 at 38.
229. Richardson, *supra* note 123 at 14.
230. See, for example, *id.*, at 14–16. For example, blacks who took on the role of preachers to proselytize and minister to a largely, though not exclusively, black population during the Great Awakening in the 1740s and other moments of "experiential" Christianity later in the eighteenth century, were referred to as "exhorters." Bruce, *supra* note 96 at 16–17, 72–73.
231. Maria W. Stewart, in Richardson, *supra* note 228 at 38.
232. Maria W. Stewart, from a "Lecture at the Franklin Hall, Boston, September 21, 1832," in *Stewart*, *supra* note 123 at 46–47.
233. *Id.*, at 49.
234. Maria W. Stewart, "An address delivered at the African Masonic Hall, Boston, February 27, 1833," in *Stewart*, *supra* note 123 at 59.
235. *Id.*, at 60–61.
236. *Id.*, at 63.
237. Richardson, *supra* note 123 at 15, 17–18.
238. Stewart, *supra* note 228 at 39–40.
239. See, for example, Anthony Amsterdam and Jerome Bruner, *Minding the Law* (Cambridge, MA: Harvard University Press, 2000), 174. William Andrews, *supra* note 69 at 23–26, 82–85, provides useful insights into the applications of speech-act theory to black autobiography.
240. Amsterdam and Bruner, *supra* note 239 at 174–76.
241. Richardson, *supra* note 123 at 17–18.
242. Maria W. Stewart, "Mrs. Stewart's Farewell Address to Her Friends in the City of Boston, September 21, 1833," in *Stewart*, *supra* note 123 at 70–71. In a letter to William Lloyd Garrison's *Liberator* in 1852, black historian and community activist William C. Nell acknowledged the difficulties Stewart had endured: "In the perilous years of '33-'35, a colored woman—Mrs. Maria M. Stewart—fired with a holy zeal to speak her sentiments on the improvement of colored Americans, encountered an opposition even from her Boston circle of friends, that would have dampened the ardor of most women." "Letter of William C. Nell," in *Stewart*, *supra* note 123 at 90.

243. Roberts, *supra* note 216 at 751; and Marilyn Richardson, "Introduction to Part II," in Stewart, *supra* note 123 at 84.
244. Richardson, *id.*, at 79.
245. William Lloyd Garrison, "Letter from William Lloyd Garrison, Boston, April 14, 1879," in Stewart, *supra* note 123 at 90.
246. Hosea Easton, "A Treatise on the Intellectual Character, and Civil and Political Condition of the Colored People of the United States and the Prejudice Exercised Towards Them" in *Negro Protest Pamphlets*, Dorothy Porter, ed. (New York: Arno Press and The New York Times, 1969), 28–29.
247. Frederick Douglass, in Harding, *supra* note 6 at 147.
248. William J. Watkins, "Our Rights As Men. An Address Delivered in Boston, Before the Legislative Committee on the Militia, February 24, 1853," in *Negro Protest Pamphlets*, *supra* note 246 at 7, 10 (emphasis in the original).
249. Harding, *supra* note 6.