2005


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RACE AND THE AMERICAN ORIGINARY MOMENT: 
THE BOSTON MASSACRE NARRATIVES 
AND THE IDEA OF CITIZENSHIP

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INTRODUCTION

All cultures invoke originary narratives—stories that mark a point of origin for a sense of national identity and express an

1. Associate Professor, City University of New York School of Law. I thank Ruthann Robson, my colleague at CUNY School of Law, and Anthony Amsterdam, Peggy Cooper Davis, and William Nelson of NYU School of Law, for their close readings and thoughtful comments. Thanks also to Penelope Andrews, Sameer Ashar, and Janet Calvo, my colleagues in a CUNY School of Law faculty scholarship working group, and to Scott Messinger, the NYU Lawyering faculty workshop, and the participants in the panel session at the New England American Studies Association 1999 Annual Conference, for advice and suggestions. I am grateful to Robert Ferguson, whose seminar in 18th Century Voices was my first occasion to investigate this topic, for his encouragement and judicious advice.

2. Priscilla Wald, Constituting Americans: Cultural Anxiety and Narrative Form 4-5 (1995) (recognizing the link between narratives of the nation and an individual's sense of belonging or identification: "National narratives... do not supply missing conceptions of personhood; rather, they forge one conception out of another to constitute an "individual" as a national subject with a new cultural identity. They may not entirely replace, but they certainly reconstruct, regional, tribal, or other affiliations. At the same time, they obscure the reformulation of personhood that accompanies the constitution of a new community, which they present as a continuity rather than a disruption"); Benedict Anderson, Imagined Communities: Reflections on the Origin and Spread of Nationalism 205 (1991) (discussing the constructed temporality of national narratives: "Nations... have no clearly identifiable births, and their deaths, if they ever happen, are never natural. Because there is no Originator, the nation's biography cannot be written evangelically, 'down time,' through a long procreative chain of begettings. The only alternative is to fashion it 'up time'—toward Peking Man, Java Man, King Arthur, wherever the lamp of archaeology casts its fitful gleam"). See Homi K. Bhabha, Introduction: Narrating the Nation, Nation and Narration 1 (Homi K. Bhabha ed.,1990) (noting the "ambivalence" around the idea and language of nation: "[D]espite the certainly with which historians speak of the 'origins' of nation as a sign of 'modernity' of society, the cultural temporality of the nation inscribes a much more transitional social reality").

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ethos to which an affiliated group claims allegiance.³ Narratively constructed nationality offers a way for a community to validate the ruptures that typically mark its transformation into a sociopolitical entity.⁴ Strategically self-defining national narratives also embody choices about who has been incorporated into the political community, and who remains beyond admissibility as a national citizen.⁵ Originary narratives thus are inherently about the idea of citizenship and its indicia—rights-bearing membership in a polity, political participation, and communal attachment.⁶

In 18th- and 19th-century American public discourse, the Boston Massacre of 1770 functioned as an originary narrative—a rendering of how, in the course of resisting a standing army in Boston, British American colonists began to develop a consciousness of themselves as a new nation.⁷ An outgrowth of tensions stoked by the quartering of British troops in colonial Boston between 1768 and 1770, the “massacre” referred

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6. For a study of the legal underpinnings of citizenship in the Revolutionary era, see generally James H. Kettner, The Development of American Citizenship in the Revolutionary Era: The Idea of Volitional Allegiance, 18 AM. J. LEG. HIST. 208 (1974). For a discussion of the multiple practices and experiences that the language of citizenship currently encompasses, see Linda Bosniak, Citizenship Denationalized, 7 IND. J. GLOBAL LEG. STUD. 447, 455 (2000). Although I consider citizenship in this article within a nationalist frame, some theorists of citizenship question linking citizenship to membership in a national state, and argue for a more pluralized view of citizenship that embraces local and supranational formations, and includes memberships in non-state collectivities. Id. at 473-78, 492-94, 505-07.
7. Over the years, the Massacre’s rhetorical function has been secured by its association with well-worn quotations from leading figures in American public discourse, notably John Adams and Daniel Webster, see infra note 202.
to the killing of five civilians in an encounter between soldiers and a local crowd. The first casualty, Crispus Attucks, identified in contemporary published reports as a "mulatto" from Framingham,\(^8\) was enshrined as a martyr, the first to die in an intensifying political struggle with Britain. The incident triggered a local outcry leading to the incarceration of the commanding officer and soldiers involved in the shooting, and the removal of the British regiments to a location outside the city.\(^9\)

Some commentators question whether Attucks was the first casualty of the American Revolution, or whether the Massacre was the catalyst for the war.\(^{10}\) Others argue that Attucks and the others who died were members of a "heedless mob,"\(^{11}\) and simply "rioters."\(^{12}\) One leading historian of the Boston Massacre has emphasized its "mythological value" and its role in supplying a "national historic memory."\(^{13}\) Despite the lack of consensus about the Massacre's role in Revolutionary-war genealogy, the incident acquired political capital in the Rev-

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10. See, e.g., Thomas Bailey, The Mythmakers of American History, 55 J. OF AM. HIST. 5, 8 (June 1968). See also Jesse Lemisch, Book Review: Radical Plot in Boston: A Study in the Use of Evidence, 84 HARV. L. REV. 485, 501 (1970) (arguing that the Massacre was at best an "outburst," not part of a "sustained militancy"). Even Attucks's ethnicity has been contested. Thomas Bailey, The Mythmakers of American History, 55 J. OF AM. HIST. 8 (June 1968). The entry on Attucks in the Dictionary of American Biography indicates the range of views on Attucks's ethnicity. E. K. Alden, Crispus Attucks 1 DICTIONARY OF AMERICAN BIOGRAPHY 415 (Allen Johnson & Dumas Malone eds., 1977). In addition to a widespread belief that Attucks was a mulatto, other accounts suggested that he was a Native American or of mixed native and African ancestry. Id. See also Harry M. Ward, Crispus Attucks 1 AMERICAN NATIONAL BIOGRAPHY 728 (John A. Garraty & Mark C. Carnes eds., 1999) (noting "different perspectives" on whether Attucks was of African or Natick Indian ancestry, or a combination).

11. ZOBEL, supra note 9, at 194, 197.


13. Id. at 4.
volutionary era through the efforts of whig\textsuperscript{14} rhetors, steeped in 17th-century British republican theory. The fashioning of a popular narrative around the events of the Massacre contributed its part to a lively colonial political discourse, and arguably helped galvanize support for an independence movement.

This article addresses the strategies through which contested narratives have invested the Boston Massacre with legal and cultural meaning, linked to competing conceptions of American citizenship—one that is based on participation and identification with a community and the other on a more narrow, ethnoracial view, based on anglocentric culture and political tradition.\textsuperscript{15} It examines how John Adams, then a rising Boston lawyer engaged to defend the soldiers (although identified with the local opposition to the British), downplayed the political implications of the incident in his closing argument and exploited Attucks’s involvement in the fracas to create an im-

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\textsuperscript{14} In this article I use the term “whig” to refer to those colonists who opposed exercises of British parliamentary authority over the colonies without representation or consent, whereas “tory” refers to those who subscribed to the legitimacy of parliamentary sovereignty over the colonies. This understanding bears some relationship to the usage of legal historian John Phillip Reid, who links these perspectives to competing notions of constitutional authority—the tory view based on the primacy of parliamentary legislation and the whig view a notion of more limited government, restrained by customary practice, reason, and contract. See, e.g., John Phillip Reid, \textit{Another Origin of Judicial Review: The Constitutional Crisis of 1776 and the Need for a Dernier Judge}, 64 N.Y.U. L. REV. 963 n.1, 964, 966-67 (1989). The oppositional whig position was influenced by the ideology of 17th-century British radicalism, as it was augmented in the early 18th Century; its core ideas included antipathy to government establishment of religion and standing armies, and support for enhanced freedom of the press and improvements in the system of representative government. \textsc{Bernard Bailyn}, \textit{The Ideological Origins of the American Revolution} 34-54 (1992). Although other commentators have used the terms tory and whig more loosely as proxies for conservative and radical positions. See, e.g., \textsc{Zobel}, \textit{supra} note 9, this flattening of the terms obscures variations in thinking among the colonists. \textsc{Lemisch}, \textit{supra} note 10, at 486 n.5.

\textsuperscript{15} See Bosniak, \textit{supra} note 6, at 500-01. Discussing ethnocultural and the liberal notion of “civic” nationality, Linda Bosniak identifies the “fundamentally exclusionary character” of any idea of citizenship that is premised on nationalism: “The very act of normatively privileging identification with, and solidarity toward, compatriots presumes the existence of a class of non-national others who are necessarily excluded from the domain of normative concern.” \textit{Id.} at 501.
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age of a bloodthirsty "Molatto"\(^{16}\) whose confrontational behavior was responsible for the violence. By linking Attucks's transgressiveness to his racial identity, reinforcing his outsider status, Adams's trial narrative, I argue, deployed race as a logic of exclusion. This exclusionary logic was bound up with the idea of citizenship—delineating who deserved to be counted among the members of an emerging national community. Arguing against that logic, abolitionist and assimilationist discourses in the 19th century still operated with reference to an exclusionary paradigm that was already ingrained within U.S. public rhetoric, legal thought, and social practice. And in the 20th century, despite the web of constitutional amendments, legislation, and judicial opinions that created a framework for equal rights, the practice of scapegoating victims of color within the American legal system has continued to disenfranchise people who have the formal status of citizens. The narrative that persuaded the jury in the first Rodney King trial to acquit the police officers charged in King's brutal assault is a chilling reminder of the cultural tendency to shift blame for official violence onto its victims.\(^{17}\)

Part II begins by considering the principal 18th-century narratives about the Massacre. The earliest accounts posited a racially undifferentiated conception of an emerging polity in British North America. Apart from the passing reference to Attucks as a mulatto, whig political discourse did not otherwise racialize his participation in the incident. However, in the largely successful defense of the soldiers against murder charges later that year, race was not only salient but carried a negative valence.\(^{18}\) John Adams replaced whig heroic narra-

\(16\) John Adams, in 3 Legal Papers of John Adams 268 (L. Kinvin Wroth & Hiller B. Zobel eds., 1965).

\(17\) In another variation of scapegoating, A. Leon Higginbotham has noted a series of cases in which the public readily credited false accusations of black criminality by purported white victims; investigation of the claims later disclosed that these accusers had simply invoked the familiar cultural narrative that deflects blame onto persons of color. A. Leon Higginbotham, Jr., Shades of Freedom: Racial Politics and Presumptions of the American Legal Process xxv-xxvii (1996).

\(18\) All but two of the defendants were acquitted and the others were convicted of less serious manslaughter charges for which they were branded
tive with a legal rhetoric of self-defense, framing the closing argument with reference to Attucks's race and the class differences between "respectable" Bostonians and the crowd that Attucks had led. Part III addresses how Adams's use of an outsider narrative, reflecting prevailing sociopolitical assumptions, marked Attucks as ineligible for membership in the nascent national community. This section analyzes Adams's selective appropriation of prevalent cultural themes and images of persons of mixed race. Conjuring a larger-than-life figure, mythic and demonic, Adams fastened blame for the Massacre on Attucks and foreclosed a prosecutorial counter-narrative of complicity in the incident by the people of Boston.

Part IV examines the ways in which race—made salient in Adams's closing argument—remained linked to a logic of exclusion in the accounts of 19th-century abolitionists and assimilationists. Like Revolutionary-era whig political discourse, these 19th-century versions of the Massacre narrative were originary and heroizing. Unlike early whig political rhetoric, however, the 19th-century Massacre narratives were racially inflected in the sense that they invoked—if only to resist—the logic of exclusion that animated Adams's pointed use of race at the trial of the British soldiers. In these accounts, Attucks functioned rhetorically as the galvanizing figure, the "colored" man whose blood sanctified the ground of British-

19. For reasons that will become apparent, during the trial Adams did not celebrate the Massacre as an emblem of an independence movement. See infra notes 70-97 and accompanying text. The language usually cited to express Adams's views about the Massacre—the language that has served to solidify the Massacre's symbolic and rhetorical importance—appeared in a letter Adams wrote in 1786. See infra note 47.

20. By the 19th Century, Attucks was identified as a colored man, and sometimes as "black," generally understood to mean a Negro, a person of African ancestry, rather than a mulatto, a person of mixed white and Negro race. This transformation seems to have been rhetorical rather than based on any new empirical evidence of his ethnocultural origins, which have remained obscure. In any case, the American colonies did not differentiate between Negroes and mulattoes for legal or social purposes, but considered persons having African ancestry, sometimes limited to three or four previous
occupied Boston, preparing the way for a new nation.\textsuperscript{21} Counter-narratives emphasized the "tory" view that, paradoxically, given Adams’s intellectual and ideological commitments, resonated with Adams’s race- and class-inflected, public order-versus-mob defense narrative at the trial. The concluding section considers the diminishment of Attucks’s cultural status in contemporary narratives of equality and citizenship, which suggests the enduring effects of Adam’s trial narrative, invested with the authority of legal discourse and Adams’s own status in the national patriarchy. Attucks’s shifting fortunes—reduced to obscurity in the discourse of black nationalists, resurrected as a "martyr" in the liberal nationalist narrative of Boston’s heritage tourism—reflect the tensions in the idea of American citizenship, and the ways in which race remains a crucial touchstone for negotiating its terms.

THE BOSTON MASSACRE AS A REVOLUTIONARY-ERA NARRATIVE: THE TENSION BETWEEN LEGAL STRATEGY AND POLITICAL IDEOLOGY

The Impulse to Narrate: Rationalizing Resistance

\textit{First Utterances}

On March 5, 1770, festering resentment between civilians and British soldiers quartered in Boston came to a head: after several days of escalating tension, a party of soldiers called in to assist a sentry stationed at the Custom House on King Street fired upon an antagonistic crowd. As a result, five civilians died, among them Crispus Attucks, identified as a "Molatto from Framingham."\textsuperscript{22} To appease the incensed townspeople, Acting Governor Thomas Hutchinson ordered an immediate inquest into the shooting. Within a few hours

\footnotesize{generations, as members of a single category. See Winthrop D. Jordan, \textit{White Over Black: American Attitudes toward the Negro}, 1550-1812 167-69 (Norton ed., 1977) (1968). In this article, I refer to Crispus Attucks as his various narrators describe him, and, unless otherwise noted, I refer to persons of African ancestry in the U.S. as "black."

21. \textit{See infra} note 188, on the significance of blood as a trope of heroic sacrifice in discourse supporting the citizenship claims of black people.

22. Zobel, \textit{supra} note 9, at 3; Dirk Hoerder, \textit{Crowd Action in Revolutionary Massachusetts}, 1765-1780 225-30 (1977).}
Captain Thomas Preston, the only officer present when the shooting occurred, was placed in custody on suspicion of murder; eight other soldiers soon joined him. In response to intense pressure from town leaders, a reluctant Hutchinson removed the two regiments of troops then stationed in the town to a post offshore.\textsuperscript{23}

In celebratory rites commemorating the event, the town honored as martyrs—and claimed as its own—all the civilians who died.\textsuperscript{24} Marking the deaths of the victims with pomp and ceremony at Faneuil Hall, followed by a mass funeral procession to the Old Granary Burial Ground,\textsuperscript{25} this public expression of mourning was alive with narrative possibilities. It served both as a marker of solidarity among the townspeople and a site of resistance against British imperial policy—linked as it was to other recent events in English and colonial experience. In fact, less than a month earlier, some two thousand mourners had turned out for the Boston funeral of eleven-year-old Christopher Seider, who had been caught by musket fire when a tory sympathizer (and alleged informer for the customs office) fired shots from a window of his home to disperse a group of youths who had pursued him there.\textsuperscript{26} In arranging the youth's funeral, local whigs no doubt saw a resemblance between this incident and the fate of an English youth killed by a soldier in London two years earlier during a demonstration that came to be known as the "massacre" at St. George's Field.\textsuperscript{27}

\textsuperscript{23} Frederic Kidder, History of the Boston Massacre, March 5, 1770 41-42 (1870); Hoelder, \textit{supra} note 22, at 231-32.


\textsuperscript{25} Address of John Fiske, in \textit{A Memorial}, \textit{supra} note 24, at 83.

\textsuperscript{26} Some of the youths (but apparently not the shooting victim) had pelted his home with stones and assorted items of food, in the course of which his wife had been struck by a rock. Zobel, \textit{supra} note 9, at 174-76.

\textsuperscript{27} The disturbance had been spurred by the imprisonment of English radical John Wilkes. The youth had been mistaken for a leader of the demonstrators. In a spectacle of English whig resistance the youth was buried ceremoniously. Bailyn, \textit{supra} note 14, at 115-16.
Given these parallels and the rhetorical possibilities they presented, it is not surprising that the events of March 5, dubbed the "Horrid Massacre," captured the public imagination. And although the outcome reinforced the whig view that standing armies were an unmitigated disaster, local whigs could not expect the provincial tory administration to agree with that assessment. In fact, Boston's whig leaders believed that a tory version of the events, destined for consumption in Britain, would blame Bostonians for provoking the confrontation with the soldiers. Without delay, the town commissioned a preemptive narrative of the events, which it published and sent to Britain under the title A Short Narrative of the Horrid Massacre in Boston. In the town's telling, the Massacre was not a discrete incident that occurred on March 5. Prior developments in Britain's administration of the colonies became an integral part of the story, a narrative choice that permitted the confrontation to be understood as a culmination of a long train of tyrannies and humiliations perpetrated by the British. The account recorded the galling circumstances surrounding the arrival of the British troops, ostensibly to guard the operations of the board of trade: the colonial governor initially made the statehouse available to the soldiers; after arranging for more permanent housing in violation of parliamentary legislation that had barred quartering of soldiers, the governor established the main guard within a short distance of the statehouse. The presence of the guard with two field-pieces aimed at the statehouse building "seemed to indicate an attack upon the constitution . . . and to

28. Zobel, supra note 9, at 210-17.
29. Bailyn, supra note 14, at 36.
30. Zobel, supra note 9, at 212-13; Kidder, supra note 23, at 115. Colonel William Dalrymple, commander of British troops in Boston, indicated that the townspeople had "concerted a general rising." His assessment was transmitted to Britain in a letter from General Thomas Gage. Reid, supra note 12, at 190.
31. Zobel, supra note 9, at 213-14; Bailyn, supra note 14, at 116.
32. The state building housed the provincial legislature and the courts.
be intended to affront the legislative and executive authority of the province."\textsuperscript{33}

Concluding that the "we had no good to expect from such conservators of the peace,"\textsuperscript{34} the narrative marshalled evidence suggesting that the British soldiers not only had precipitated the violence on March 5 but had done so according to a preconceived plan. Here again, the town's attention to events preceding the confrontation on the 5th was a critical narrative choice that made its conspiracy theory more plausible. Citing depositions taken from various townspeople, the narrative described a disagreement that developed between some soldiers and a group of ropemakers three days earlier in which the soldiers repeatedly challenged, and were in each instance beset by, the workers. There was evidence that the soldiers had predicted a bloody retaliation on the 5th and had instigated encounters against civilians for a three-and-a-half-hour period that day, culminating in the shootings. Immediately after the shots were fired, reinforcements from the regiment appeared on the scene, arrayed and poised to fire upon the civilians.\textsuperscript{35} The narrative related how Acting Colonial Governor Thomas Hutchinson acceded to the town’s resolution that all troops be reassigned to a location outside the town.\textsuperscript{36} Attached to the account were ninety-six depositions about the incident given by members of the community.\textsuperscript{37}

In "Additional Observations," an appendix to the narrative,\textsuperscript{38} Boston's whig rhetors anticipated the tory version of events.\textsuperscript{39} Engaging in a distinctly legal line of argument, the

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\item[33.] KIDDER, supra note 23, at 25-28. The narrative added that the legislature declined to conduct its business under circumstances suggesting "duress," and met instead in Cambridge. \textit{Id.} at 28.
\item[34.] \textit{Id.} at 27-29.
\item[35.] KIDDER, supra note 23, at 33-41.
\item[36.] \textit{Id.} at 42-44.
\item[37.] \textit{Id.} at 47-109.
\item[38.] After transmitting copies of the narrative abroad, the town halted further circulation until the criminal charges against the soldiers had been resolved, to avoid possibly prejudicing the jurors. These additional remarks were to be appended to the remaining copies of the narrative. KIDDER, supra note 23, at 114, n.2.
\item[39.] The supposed tory version would emphasize that the Customs House had been set upon and the revenues from trade thereby placed at risk, and
\end{itemize}
addendum reasoned that when the king's army acted in violation of law, it forfeited its status as the king's troops and, thus, might be resisted; in fact, the failure to resist was "a species of treason against the constitution." 40 Moreover, the addendum implicitly threatened a more permanent break with Britain: "[The colonists] have within themselves the means of living conveniently, if not with elegance, even if their communication with the rest of mankind were wholly cut off." 41 In a barely veiled challenge to British revenue-collection and enforcement policies, the narrative somewhat ominously invited parliament to consider whether it would be well-advised to "hazard" the benefits of continued economic and political links with the colonies. 42

_Solidifying Rhetorical Gains: The Commemorative Orations_

To reinforce its official account of the Massacre, the town of Boston memorialized the incident with an annual oration by a leading citizen. 43 In the early years of the orations, the commemoration also included ritualized lantern display—transparent paintings of scenes associated with the shooting—including a feminized figural representation of America, seen pointing to her slaughtered "sons," or trampling upon a grena-

that the firing on the crowd was necessary to protect the revenue. (In fact, in a letter to General Gage, Captain Preston wrote that he had ordered out the soldiers to protect the sentry from violence, perhaps murder, and to safeguard the king's revenues, kept at the Custom House. Reid, supra note 12, at 204. As John Reid points out, Preston's grounding his action on the asserted need to protect the "king's chest," a non-military-matter, made him legally vulnerable since he had no civilian authorization to do so. Id.). The account would also argue that the troops forcibly evacuated the town, and that the commissioners of trade were required to vacate as well, out of concern for their safety; that the commissioners' operations were disrupted as a result; that the very continuation of government was in jeopardy, the province having broached rebellion. Id. at 115-16.

40. Kidder, supra note 23, at 117.
41. Id. at 120.
42. Id.
43. Id. at 44, n 1. The orations continued until 1784, when July 4 was chosen as the date on which to celebrate political independence.
The choice of socially prominent annual speakers, including merchant and whig activist John Hancock, various physicians, attorneys, and a minister, suggests both the strategic importance of the Massacre within whig political culture and the whigs' perceived need to dissociate the incident from the accusation that it was the product of mob violence. Faithful to whig rhetorical conventions, a number of the addresses catalogued the abuses of standing armies. This excerpt from Reverend Peter Thacher is representative:

To frighten us into submission to their unjustifiable claims, [the administration of George III] sent a military force to the town of Boston... By their intercourse with the troops, ... the morals of our youth were corrupted, the temples and the day of our lord were slanderously profaned; we experienced the most provoking insults; and at length saw the streets of Boston strewed with the corpses of five of its inhabitants murdered in cool blood by the British mercenaries.

44. The images appeared in the window of a lighted structure, usually an inn. In the first year of the oration, the exhibition was staged in the home of Paul Revere. JAMES S. LORING, THE HUNDRED BOSTON ORATORS APPOINTED BY THE MUNICIPAL AUTHORITIES AND OTHER PUBLIC BODIES FROM 1770 TO 1852 24, 59 (1855). Revere also produced an engraving of the scene of the shooting, entitled "The Bloody Massacre perpetrated in King Street, Boston on March 5, 1770 by a party of the 29th regiment." SIDNEY KAPLAN, The Black Presence in the Era of the American Revolution 1770-1800 6 (1973); A MEMORIAL, supra note 24, at 87-88.

45. Thomas Young (1771), Benjamin Church (1773), Joseph Warren (1772 and 1775), Thomas Welsh (1783).

46. Benjamin Hichborn (1777), Jonathan Williams Austin (1778), William Tudor (1779), Jonathan. Mason (1780), Thomas Dawes (1781), George Richards Minot (1782).

47. Peter Thacher (1776). A number of the speakers went on to even greater accomplishments. Hancock, for example, was elected president of the Continental Congress and later served as governor of Massachusetts. Jonathan Mason became a state legislator and a United States Senator. John Adams declined an invitation to deliver one of the orations, see PAGE SMITH, 1 JOHN ADAMS 139 (1962), though he was later to acknowledge, in terms befitting the tenor of the orations, that "[o] n that Night the Foundation of American Independence was laid." Letter of John Adams to Matthew Robinson (Mar. 2, 1786) in 8 THE WORKS OF JOHN ADAMS 384 (Charles Francis Adams ed., 1853) (hereinafter JA WORKS).

48. LORING, supra note 44, at 123.
Focusing on immediate conditions, Joseph Warren’s 1775 address contained an explicit call to arms:

If pacific measures are ineffectual, and it appears that the only way to safety is through fields of blood, I know you will not turn your faces from your foes, but will, undoubtedly, press forward, until tyranny is trodden under foot, and you have fixed your adored goddess Liberty fast by Brunschwick’s side, on the American throne.  

Invoking the political significance of the Massacre, Thomas Dawes referred to it specifically as a spur to an independence movement:

The provocations of that night must be numbered among the master springs which gave the first motion to a vast machinery, a noble and comprehensive system of national independence. . . Massachusetts may certainly date many of its blessings from the Boston Massacre—a dark hour in itself; but from which a marvelous light has arisen. From that night, revolution became inevitable.

Heightening a sense of solidarity against a common British enemy, the discourse and iconography of the Massacre did not differentiate among the slain civilians on the basis of national ancestry or ethnicity. The addresses referred to them as “our brethren,” “those departed citizens who fell,” “bleeding countrymen,” and “inhabitants” of the town. In the same spirit of inclusion, the town had interred all five in a single vault. As memorialized by the town, the Massacre adumbrated the beginning of a movement toward political independence. Like any birth, the Massacre entailed a painful wrenching from a prenatal state of dependence and security, but it also opened up the possibility of a new national commu-

49. Id. at 59.
50. Id. at 143.
51. Id. at 143 (address of Thomas Dawes).
52. Id. at 140 (address of Jonathan Mason).
53. Id. at 39 (address of Benjamin Church).
54. Id. at 123 (address of Peter Thacher).
55. Id. at 19.
nity, an impulse that would be rhetorically consummated in the Declaration of Independence six years later.\textsuperscript{56}

Narrative Reformulation: The Legal Narrative of the Boston Massacre

If Boston’s interpretation of events during the decade of the 1770s hewed to the whig party line on standing armies, John Adams, then a successful whig lawyer, offered a less predictable response to the Massacre when he accepted a retainer to defend Captain Preston and the soldiers.\textsuperscript{57} Adams’s participation in the defense case seemed, then and today, anomalous, and certainly intriguing,\textsuperscript{58} presenting an ethically complicated rhetorical challenge that put his legal and political roles in tension.\textsuperscript{59} More to the point, his involvement in the trial was filled with narrative implications. Adams understood that the portrayal of events that led to the killings, in particular the behavior of the persons in the crowd who tangled with the soldiers, had political consequences for the town of Boston. To craft a defense for the soldiers that remained consistent with the whig

\textsuperscript{56} "We hold these truths to be self evident, that all men are created equal." \textit{Great Issues in American History: From Settlement to Revolution}, 1584-1776 469 (Clarence L. Ver Steeg and Richard Hofstadter eds., 1969) (1776) (quoting the Declaration of Independence).

\textsuperscript{57} \textit{Wroth \& Zobel}, supra note 16, at 6; \textit{Smith}, supra note 47, at 121.

\textsuperscript{58} \textit{Smith}, supra note 47, at 120-122. Adams often wrote that his motives for defending the soldiers had been misunderstood, that he had been falsely accused of betraying the whig cause. \textit{3 Diary and Autobiography of John Adams} 293-94, 296 (L. H. Butterfield ed., 1961) (hereinafter JA Diary); 10 JA Works, supra note 47, at 162. In fact, the public's understanding of Adams's role seems to have been as complicated as Adams's own motivations. That Adams was asked to deliver a commemorative Boston Massacre oration, an offer Adams declined, suggests some vindication. \textit{See Smith}, supra note 47, at 139. And, it seems that Adams was vindicated when, in the oration of 1773, Benjamin Church actually granted that the result of the trials had been justified by the character of the crowd—after which Church reverted to conventional whig rhetoric, placing the blame on standing armies. \textit{Smith}, supra note 47, at 143.

\textsuperscript{59} \textit{See} Reid, supra note 12, at 198-206.
political narrative, it was critical to avoid casting the residents of Boston as the instigators of the incident.  

The political overtones of the case, and the personal and professional implications for Adams in undertaking it, called for a carefully-wrought strategy of persuasion adequate to negotiate the expectations and prejudices of various audiences: his clients, whose legal interests were not necessarily identical; a jury,\textsuperscript{61} the Crown-appointed judges who would instruct the jurors on the applicable law; the whig political organization in Boston; the whig-dominated townspeople; the tory administration at home and in Britain; and the inhabitants of the other American colonies. Out of these conflicting imperatives, Adams developed a trial narrative designed to engender empathy for the defendants and yet avoid casting blame for the violence on Bostonians.\textsuperscript{62}

\textsuperscript{60} Smith, supra note 47, at 120-21. Adams’s reflections thirty-five years later illuminate the nuances of his motivations, and the extent to which he considered the larger significance of this case:

If the Soldiers in self defense should kill any of them they must be tryed, and if Truth was respected and the Law prevailed must be acquitted. To depend upon the perversion of Law and the Corruption or partiality of Juries, would insensibly disgrace the Jurisprudence of the Country and corrupt the Morals of the People. It would be better for the whole People to rise in their Majesty, and insist on the removal of the Army, and take upon themselves the Consequences, than to excite such Passions between the People and the Soldiers [as] would expose both to continual prosecution civil or criminal and keep the Town boiling in a continual fermentation.

JA Diary, supra note 58, at 292.

There is some suggestion—and it was reportedly the belief of Acting Governor Hutchinson—that Boston’s whig party wanted Adams to defend the soldiers precisely to ensure that Boston through its inhabitants would not appear to be the fomentor of the violence. See, e.g., Zobel, supra note 9, at 220-21; Reid, supra note 12, at 200-01. For a more skeptical view of the whigs’ supposed orchestration of events surrounding the Massacre, see Lemisch, supra note 10, at 496-503 (characterizing Zobel’s history as a “Tory account” and questioning, on the paucity of the evidence, Zobel’s conclusion that Boston’s radicals had a strong hand in directing the events of March 5 and the subsequent trial).

\textsuperscript{61} In Preston’s trial many known whigs were excluded under peremptory challenges and their seats were filled by “talesmen” selected by a tory sheriff. Reid, supra note 12, at 196-97. In the trial of the soldiers, some of the jurors were whigs, though none was from the town of Boston proper. Id. at 197 n.26.

\textsuperscript{62} Wroth & Zobel, supra note 16, at 27.
Adams's Closing Argument: Rationalizing Empathy and Blame

The charges against Captain Preston and the soldiers were not called for trial until the autumn of 1770, after a cooling off period for the town.63 Although the materials that have survived from the Preston case are fragmentary,64 the transcript of the trial of the soldiers (Rex v. Wemms) has preserved the arguments of counsel virtually verbatim, including Adams's lengthy summation.65 Illuminating the legal and factual themes that Adams developed for the benefit of his audiences, Adams's summation in Wemms warrants close examination.

At the conclusion of the trial testimony, Adams and whig co-counsel Josiah Quincy Jr. each delivered a closing argument to a jury composed of persons living outside Boston proper.66 The two arguments resonated with each other, but

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63. Id. at 14.
64. They consist of summaries of Crown and defense testimony; skeletal notes of the authorities cited by counsel in argument; and minutes of the Crown's brief closing. Id. at 20-22. Although Preston apparently had some qualms about Adams's representation at the trial, based on Adams's objection to introducing evidence suggesting a whig plot to displace the soldiers, in other respects Adams showed himself to be zealous in Preston's defense. Zobel, supra note 9, at 259-60. Although there is no record evidence to confirm it, the working man George Hewes, whose own participation in the Massacre and the subsequent legal proceedings was memorialized in the 1830s, recalls that he was a government witness in Captain Preston's trial and that Adams was prepared to impeach the accuracy of Hewes's observation. Stating that he had testified that he believed Preston had ordered the soldiers to fire, he recounted that "Mr. John Adams, former President of the United States, was advocate for the prisoners, and denied the fact, that Captain Preston gave orders to his men to fire; and on his cross examination of me asked whether my position was such, that I could see the captain's lips in motion when the order to fire was given; to which I answered, that I could not." Alfred F. Young, George Robert Twelves Hewes (1742-1840): A Boston Shoemaker and the Memory of the American Revolution, William & Mary Quarterly 561, 589 (1981) (quoting James Hawkes, A Retrospect of the Boston Tea Party, with a Memoir of George R.T. Hewes, a Survivor of the Little Band of Patriots Who Drowned the Tea in Boston Harbour in 1773 32 (1834)).
65. The transcript, however, does not distinguish between direct and cross-examination. Wroth & Zobel, supra note 16, at 25.
66. Id. David Flaherty notes that the availability of closing argument in the colonial period represented a significant advantage for criminal defendants: contrary to current practice, lawyers could address both law and fact in
remained distinct in thematic focus. Quincy’s argument was shorter, more fact-based, more emotional and hyperbolic, emphasizing the menace of the crowd, the soldiers’ equal claim to the protection of the law of self-defense, and the inflammatory nature of the crowd’s language. Structurally and rhetorically Adams’s closing was more sophisticated than Quincy’s. Like his co-counsel, Adams was concerned that ingrained prejudice against the military establishment would disable the jurors from empathizing with the soldiers. For this reason he needed to separate the soldiers from the institutional standing army, assimilate them to the category of private citizen, and underscore the reasonableness of the soldiers’ belief of danger.

Adams emphasized the universality and necessity of a rule of law, an overarching theme that he intoned with the reverence of a votary. In addition to invoking the law as an enduring value, Adams focused the jury’s attention on the close fit between the evidence in the case and the legal framework constructed from the doctrines of justification, unlawful assembly, and mitigation. He pointed to a rational basis—rooted in the

summation and thus could have a strong impact on lay jurors. DAVID H. FLAHERTY, CRIMINAL PRACTICE IN PROVINCIAL MASSACHUSETTS, IN LAW IN COLONIAL MASSACHUSETTS 1630-1800 241 (1984). During the period of Flaherty’s study (17th and 18th century), closing arguments were not permitted in criminal trials in England. Id.

67. See Josiah Quincy’s Argument for the Defense in WROTH & ZOBEL, supra note 16, at 226-41. The following excerpt is illustrative:

Does the law allow one member of the community to behave in this manner towards his fellow citizen, and then bid the injured party be calm and moderate? The expressions from one party [the soldiers] were “Stand off—stand off”—“I am upon my station”—“if they molest me upon my post, I will fire.”—”By God I will fire!”—Keep off!” These were the words likely to produce reflection and procure peace. But had the words on the other hand a similar tendency? . . . Answer for yourselves, Gentlemen. The words reiterated, all around, [“you lobster,” “You bloody-back,” “You coward” and “You dastard”] stabbed to the heart, the actions of the assailants tended to a worse end; To awaken every passion of which the human breast is susceptible . . . To expect, under these circumstances, that such words would asswage [sic] the tempest . . . You might, as rationally, expect . . . that the flames of Etna would extinguish a conflagration!

Id. at 233-34.


69. Id. at 29.
law—for inferences that he would ask them to draw concerning the factually based themes of empathizing with the soldiers and absolving Boston from responsibility for the disturbance. To deflect tory criticism, Adams distanced the mainstream Boston community from the crowd’s behavior while offering Crispus Attacks as a scapegoat. Hiller Zobel has suggested that Adams’s essential strategy here was simply to blame the outcome on the pugnacity of “outside agitators,”—Attucks and Patrick Carr from Ireland. In assigning blame principally to Attucks, whom Adams identified as a Framingham resident, Ad\nams did exploit Attucks’s lack of connection to Boston. But in highlighting the aggressive actions of Attucks in racially stereotypical terms, Adams manipulated Attucks’s status as a racial and cultural outsider, to lend emotive force to the rhetoric of blame.

Building Empathy, Deflecting Blame

Adams began the argument with a ringing quotation from Cesare Beccaria’s On Crimes and Punishments. The quoted language captured the awkwardness of Adams’s personal situation at the time, and the spirit he used to cope with it: “I am

70. Zobel, supra note 9, at 292. For a concise discussion of the political strategy revealed in the content and rhetoric of Adams’s arguments, see Zobel’s analysis of the summation. Id. at 289-93.

Winthrop Jordan notes that the predominantly Protestant English colonists had long denigrated the Irish Catholic emigres, most of whom had come to the colonies in the capacity of servants. Jordan, supra note 20, at 86, 88. In fact, there is considerable evidence that nativist groups treated blacks and Irish with similar contempt. Nineteenth-century representations of Irish immigrants as a “mongrel mass” recall the bestialized images of blacks that, centuries before, had taken hold of the imagination of whites. See Herbert B. Gutman, Work, Culture, and Society in Industrializing America: Essays on Working-Class and Social History 59 n.41, 71 (1966) (referring to commonalities in the “premodern rural [work] experience”). On the other hand, American blacks and Irish immigrants and their descendants had a complicated, often conflictual relation, as suggested in the violence against blacks in Philadelphia during the 1830s and 1840s and labor strife in New York City in the 1850s and 1860s. Noel Ignatiev, How the Irish Became White 120-21, 124-44 (1995).
71. Ignatiev, supra note 70, at 191, 214.
72. Id.
for the prisoners at the bar, and shall apologize for it only in the words of the Marquis Beccaria: 'If I can but be the instrument of preserving one life, his blessing and tears of transport, shall be a sufficient consolation to me, for the contempt of all mankind.'

The decision to invoke Beccaria was astute; Beccaria's work challenging the prevailing standards of criminal justice had achieved an unusual acclaim since its publication in 1764.

Presumably the essay's broad humanitarian premises, and perhaps also the popular misconception that Beccaria's limited output after its publication was the result of censorship, contributed to the strong emotional response that these words evoked in Adams's listeners. Adams affirmed that it was "more beneficial, that many guilty persons should escape unpunished, than one innocent person should suffer." In a capital case, emphasis on the law's preference for acquittal would seem obligatory. However, the notion that it was acceptable to allow many persons to go unpunished in the interest of saving one innocent person had a special significance in the Wemms case because of the record indications that at least one of the eight soldiers had not fired a shot and that not all of the gun discharges had resulted in death.

Hence, Adams "take[s] it for granted, as a first principle, that the eight prisoners at the bar, had better be all acquitted, though we should admit them all to be guilty, than, that any one of them should by your verdict be found guilty, being innocent."

Setting the stage for a discussion of the justification defense, Adams recalled that the British soldiers who killed Frenchmen

74. Id.
76. Id. at xix-xx, xvi-xvii.
77. Paolucci, supra note 74, at xvi. In fact, Beccaria withdrew from the life of public letters in his native Milan after his brief encounter with celebrity following publication of On Crimes and Punishments proved psychologically overwhelming. Id. at xiv-xvi.
78. Id. at xi; 1 JA Works, supra note 47, at 111-12.
80. Id. at 298.
81. Id. at 243.
during the French and Indian War were, under English law, considered heroic and dutiful. Imperfect as it was, the invited analogy between British soldiers' firing on an unruly crowd in Boston in peacetime and their recent wartime defense of the colonists against enemy attack offered a more sympathetic, nuanced view of the British soldiers' presence in North America.

To create empathy for the soldiers, Adams appealed to the capacity of the jurors to imagine the soldiers' experiences and perceptions on March 5:

[Y]ou must place yourselves in the situation of Wemms or Kilroy—consider yourselves, as knowing that the prejudices of the world about you, were against you; that the people about you, thought you came to dragoon them into obedience to statutes, ... which they thoroughly detested; that many of these people were thoughtless and inconsiderate, old and young, sailors and landmen, negroes and mulattos; that they, the soldiers had no friends about them, the rest were in opposition to them. ... making the mob whistle as they call it, which ... when made by a multitude, is a most hideous shriek, almost as terrible as an Indian yell; the people crying Kill them! Kill them! 83

In his choice of the verb "dragoon," Adams tapped into its association with the dreaded practice of impressment. Implicitly, he argued that these soldiers, friendless and misunderstood, were not of the species that would press-gang a colonist. Building up a sense of the crowd's ferocity, Adams tread gingerly over the question of the crowd's makeup. But in summoning up the terror of an "Indian yell," and in specifying that "negroes and molattos" were among the "thoughtless and in-

82. See id. at 244.

83. Id. at 246. I have reproduced throughout this section the forms of spelling, typeface, and punctuation reproduced in Wroth and Zobel's edition of the trial documents.

84. Impressment refers to the practice of recruiting by force seamen from other vessels to serve on the crew of British ships. Zobel, supra note 9, at 73. A British statute adopted in 1707 prohibited impressment of seamen on vessels operating in America. See generally id. at 113-131 (discussing a trial in Boston in which John Adams and co-counsel James Otis successfully defended four Irish seamen who killed a British lieutenant allegedly because he was seeking to impress them).
considerate” that had misjudged the soldiers, Adams insinuated the outsider theme.85

Addressing a more troubling concern—the risk that the Boston community, if not the jury, would feel compelled to exact British blood for the innocent blood shed—Adams acknowledged that at least two of the five victims were known to be upstanding people of Boston, unlikely to have been involved in the disturbance.86 Then Adams exploited the opportunity to develop a theory of individual blame:

[W]hat had eight soldiers to expect from such a set of people? Would it have been a prudent resolution in them, or in any body in their situation, to have stood still, to see if the sailors would knock their brains out, or not? . . . The soldiers were loading their guns, when the twelve surrounded them; . . . these were some of the persons who had been arming themselves with sticks from the butchers stalls and cord wood piles, and marched up round Corn-hill under the command of Attucks.87

Adams used the evidence to build a scene of frenzy and menace, in the thick of which he placed Attucks. Hypothesizing that “the Molatto man,” Attucks, had attacked one of the

85. Adams also recurred to ultimate causes. In a favored whig strategy, Adams implied—without naming the British government directly—that the responsibility for the Massacre rested with a flawed imperial administration that had imposed burdensome revenue measures upon the province and had inflicted upon it a standing army. Hoerder, supra note 22, at 180; Kidder, supra note 23, at 25-28. Drawing on larger principles of political theory, Adams was thus able to maintain a position of deniability: [I]t is a general, if not universal truth, that the aptitude of the people to mutinies, seditions, tumults and insurrections, is in direct proportion to the despotism of the government. . . . the virtue and wisdom of the administration, may generally be measured by the peace and order, that are seen among the people. . .


Nonetheless, such a point would not be lost upon the whigs in Boston or England, as their opposition to “standing armies in peacetime” was constitutive. See, e.g., Bailyn, supra note 14, at 36. These insinuated references to a standing army would resonate with the more direct condemnation of the institution which would appear in the Declarations of the Continental Congresses. See Ver Steeg & Hofstadter, supra note 56, at 422, 426, 444, 446, 468, 470.

86. Wroth & Zobel, supra note 16, at 255.

87. Id. at 262.
soldiers, Adams argued that the soldiers who fired to defend themselves would not be responsible under the law for the unintended deaths of other innocent persons.\(^\text{88}\) Emphasizing that the outnumbered soldiers were required to remain at their post by the sentry, Adams continued to evoke a sense of danger—legitimating the soldiers' fears—as he built on the idea that Attucks was the instigator of the violence.\(^\text{89}\)

As Adams had represented the activities of the civilians as a "riot," he characterized the group itself, with similar attention to social class dynamics, as a "mob": "The plain English is gentlemen, [they were] most probably a motley rabble of saucy boys, negroes and molattoes, Irish teagues and outlandish jack tarrs.\(^\text{90}\) And why we should scruple to call such a set of people a mob, I can't conceive, unless the name is too respectable for them."\(^\text{91}\) Highlighting exculpatory testimony from a Crown witness, Adams exploited the sense of pandemonium at the scene to evoke empathy for Montgomery, one of the British soldiers charged with murder.

\(^{88}\) Id. at 256-257.

\(^{89}\) To dispel the notion that one of the soldiers had a preexisting intent to fire upon the civilians, Adams highlighted testimony suggesting that Samuel Gray, the soldier's victim, was not an innocent bystander: Gray had been observed bearing a stick on the night of March 5 before the firing; had been heard to say that he would "have a slap at them, if I lose my life"; had appeared to be inebriated while in King Street; and had encouraged the civilians to stay at the Custom House, claiming that the soldiers "dare not fire." Id. at 266.

\(^{90}\) Jack tarr is a term for a sailor. The Chambers Dictionary 893 (1993).

\(^{91}\) Wroth & Zobel, supra note 16, at 266. As quickly as he had uttered this epithet, though, he dismissed its importance in the larger scheme of things: "The sun is not about to stand still or go out, nor the rivers to dry up because there was a mob in Boston on the 5th of March that attacked a party of soldiers . . ." Id. Having cast the supposed consequences of this isolated event in cosmic terms, Adams drew attention to the disparity between perception and reality, to good effect. To mitigate the sting of his characterization even more, Adams reverted to an earlier theme, laying ultimate blame for these consequences with the policy of standing armies. "[I]ndeed, from the nature of things, soldiers quartered in a populous town, will always occasion two mobs, where they prevent one. They are wretched conservators of the peace!" Id., echoing here language from the town's own narrative. Kidder, supra note 23, at 29.
When the multitude was shouting and huzzaing, and threatening life, the bells all ringing, the mob whistle screaming and rending like an Indian yell, . . . Montgomery . . . [was] smote with a club and knocked down, and as soon as he could rise and take up his firelock, another club from a far struck his breast or shoulder, what could he do? Do you expect he should behave like a Stoick Philosopher lost in Apathy? Patient as Epictatus while his master was breaking his legs with a cudgel? It is impossible you should find him guilty of murder . . .”92

Summoning a cacophony of aural impressions to build a wall of frightening noise, Adams created an aura of vulnerability among the armed soldiers. He shifted the locus of victimization to the town itself as he continued to emphasize Crispus Attucks’s aggressiveness:

So that this Attucks . . . appears to have undertaken to be the hero of the night; and to lead this army . . . with their clubs . . . If this was not an unlawful assembly, there never was one in the world. Attucks with his myrmidons comes round Jockson’s corner, and down to the party by the Sentry-box; when . . . this man with his party cried, do not be afraid of them, they dare not fire, kill them! kill them! Knock them over! And he tried to knock their brains out . . . This was the behavior of Attucks—to whose mad behaviour, in all probability, the dreadful carnage of that night, is chiefly to be ascribed . . . And . . . in this manner, this town has been often treated; a Carr from Ireland, and an Attucks from Framingham, happening to be here, shall sally out upon their thoughtless enterprizes, at the head of such a rabble of Negroes, &c. as they can collect together, and then there are not wanting, persons to ascribe all their doings to the good people of the town.93

It was thus an outsider like Attucks (with a reference to the Irishman Carr to hammer home the outsider theme), who, after inflicting himself on the town, exposed it to false accusations of rowdyism. Represented as provocateur, Attucks served as a foil both for the soldiers in their trial on criminal

93. Id. at 268-69.
charges and for Boston as it faced the tribunal of world (but especially tory) opinion. 94

The Interplay of Law and Fact

Adams concluded the argument by reaffirming the theme that law’s enduring value lay in its neutrality, its invulnerability to passion. Quoting Algernon Sidney, the 17th-century British republican theorist and political martyr, 95 Adams ended the argument, as he began, with a paean to the law. 96 Interweaving legal and factual themes throughout the argument, Adams argued to the jury and to the residents of whig-inclined Boston that the facts were such as to engender empathy for the soldiers and that the law gave them a valid basis to empathize—in the doctrines of self defense and the right to aid

94. John Reid has argued that Adams’s forthrightness in naming the crowd of civilians as a “mob” vindicates Adams from the charge lodged by some historians that he had downplayed available evidence of the crowd’s aggressiveness to preserve Boston’s reputation. Reid, supra note 12, at 202. However, by fastening responsibility onto Attucks, Adams’s rhetoric also minimized the town’s exposure.

95. Sidney’s Discourses Concerning Government, a treatise developing the principles of republican government, would have been familiar to many at the time. Alan Craig Houston, Algernon Sidney and the Republican Heritage in England and America 4 (1991).

Beyond his political philosophy, Sidney’s personal history lent his name a distinct emotive force; at his trial for treason during the reign of Charles II, the unpublished manuscript of Discourses had been placed in evidence as the requisite second witness against him; his conviction and execution caused him to be heralded as a political martyr, the “British Brutus.” Id. at 4, 8, 11, 58, 63-64.

96. The law, says he, no passion can disturb. ’Tis void of desire and fear, lust and anger. ’Tis mens sine affectu; written reason; retaining some measure of the divine perfection. It does not enjoin that which pleases a weak, frail man, but without any regard to persons, commands that which is good, and punishes evil in all, whether rich, or poor, high or low. ’Tis deaf, invulnerable, inflexible.” Wroth & Zobel, supra note 16, at 270. Adams’s invocation of Sidney in a widely followed trial fraught with political implications is consistent with Bernard Bailyn’s position that the rhetoric of 17th-century English radicalism was an integral part of the ideology of the American revolution. See, e.g., Bailyn, supra note 14, at 34-35. But see Condit & Lucattes, supra note 3, at 21, 25, 38-39, for the view that the discourse of Boston’s whigs, which borrowed heavily from the tradition of the English radicals, was not representative of the rest of the colonies in the prerevolutionary period.
another in distress. Similarly, Adams "rationalized" blaming Attucks, the seemingly eager participant in the disturbance, because, above all, the law valued order and stability.

Constructing a narrative of individual blame to bolster the conventional whig story of a repressive standing army was also consistent with the need to reconcile conflicting imperatives. Although his whig audience would applaud a story inspired by familiar standing-army polemics, there was no reason to expect that the tories would regard it as anything other than political rhetoric that they had rejected before. From the tory perspective, then, there would be only a rowdy mob from the town that had presumed to justify its resistance in the reasoned discourse of the law. Nor would a strategy grounded exclusively in attack on standing armies be without risk for Adams's clients; they were, after all, members of a standing army. The jurors might be unable to separate the individuals from the institution that they served. Fastening the immediate responsibility for the violence upon a single victim of the shooting reduced these risks, and enabled Adams to reconcile the obligation of fidelity to his clients with the desire to spare Boston from opprobrium.

The ethical implications of Adams's strategy are more problematic. If, as it appears, there was some evidence that Attucks was an aggressor in the dispute, it would seem incumbent upon Adams, even in the absence of a promulgated code of professional responsibility requiring zealous representation, to argue the point as part of a theory of justification or, at least, mitigation. However, Adams's portrayal of Attucks as agent provocateur was complicated by his reliance on racialized representation: Adams invoked Attucks's race as a bete noire to heighten the soldiers' sense of danger and rationalize their panicked responses. In Adams's rendering, Attucks was never simply a non-resident but rather a menacing figure whose behavior and appearance would hardly resonate with the colonists' experience of themselves. Manipulating an outsider discourse that invoked popular biases and resistances to racial difference, Adams's closing argument appealed to ethnic homogeneity in the same way that the drafters of the Declara-
tion of Independence, addressed to "our British brethren," invoked "ties of our common kindred" and "consanguinity." 97 Despite these concerns, one latter-day commentator placed Adams's resort to racial stereotypes in the context of zealous advocacy in a criminal defense. 98 These ethical considerations aside, Adams's assumption that Attucks would not be counted as a member of the political and cultural community that bound together the British-descended colonists exemplifies the exclusionary logic that would come to characterize official public discourse about national citizenship in the new nation.

THE LOGIC OF EXCLUSION: EXPLOITING PERCEPTIONS OF RACIAL DIFFERENCE

Race-Based Discourse in Eighteenth-Century Colonial North America

In subtle ways, Adams's pointed use of the "racial other" rearticulated dominant cultural images of blacks—persons identified as Negroes or mulattoes—in late-18th-century America. These images, in turn, were the product of conflicting impulses within the culture about racial difference. By 1770, the changing dynamics of the colonies' relations with Britain produced a political environment in which it became feasible—and logically imperative—for the colonists to acknowledge both the shared humanity of blacks and whites 99 and the inconsistency between the colonists' toleration of Afri-

97. Id. at 472. Adams was a member of the committee assigned to draft the Declaration. Thomas Jefferson, another committee member, did the bulk of the drafting, with Adams and Ben Franklin providing some editorial suggestions. Id. at 468.


99. JORDAN, supra note 20, at 289, 311.
can slavery and their own rights-based agenda.\textsuperscript{100} Although grounded in natural rights theory,\textsuperscript{101} and a related strain of "environmentalist" thought,\textsuperscript{102} Revolutionary Era antislavery sentiment was not confined to political discourse.\textsuperscript{103} It reinforced and gained strength from a religious tradition, exemplified in the moral discourse of New England’s Congregational clergy,\textsuperscript{104} in the Quakers' antislavery writings,\textsuperscript{105} and in the preaching of the revivalist clergy.\textsuperscript{106}

The literary output of Puritan New England included many examples of antislavery principles, among them Judge Samuel Sewall’s \textit{Selling of Joseph}\textsuperscript{107} and Cotton Mather’s writings in the early 18th century,\textsuperscript{108} and the sermons of Samuel Hopkins, Levi Hart, and others\textsuperscript{109} in the prerevolutionary period. Premised on the equality of all persons before God, Puritan theology afforded no doctrinal basis for ranking souls.\textsuperscript{110} With their Calvinist roots, New England’s Congregational ministry condemned slavery as communal sin,\textsuperscript{111} placing it squarely within the public responsibility.\textsuperscript{112} Mid-18th-century religious revivals, collectively known as the Great Awakening, augmented the possibilities for blacks to be understood as spiritual brothers and sisters, and encouraged widespread religious conversions without regard to skin color.\textsuperscript{113} And Quaker antislavery activists Anthony Benezet and John Woolman emphasized

\textsuperscript{100} GARY B. NASH, \textit{RACE AND REVOLUTION} 3-11 (1990); BAILYN, \textit{supra} note 14, at 235-46. \textit{But see} CONDIT & LUCIATES, \textit{supra} note 3, at 34-37 (arguing that the usage of "slavery" in pre-Revolutionary Anglo-American discourse was the equivalent of "despotic governments usurping popular sovereignty" rather than chattel slavery).
\textsuperscript{101} \textit{Id.} \textit{supra} note 99, at 8.
\textsuperscript{102} \textit{Id.} \textit{supra} note 20, at 283, 286-87, 288-89.
\textsuperscript{103} \textit{Id.} at 200.
\textsuperscript{104} \textit{Id.} at 200, 202, 204, 297-98, 300.
\textsuperscript{105} \textit{Id.} at 272, 274-76.
\textsuperscript{106} \textit{Id.} at 213-14.
\textsuperscript{107} \textit{Id.} at 195-97.
\textsuperscript{108} \textit{Id.} at 200, 202, 203-04.
\textsuperscript{109} \textit{Id.} at 297-98, 300.
\textsuperscript{110} \textit{See} SACVAN BERCOVITCH, The Puritan Origins of the American Self 13-14, 67 (1975).
\textsuperscript{111} \textit{Id.} \textit{supra} note 20, at 298, 300.
\textsuperscript{112} \textit{Id.}
\textsuperscript{113} \textit{Id.} at 213-14.
that it was slavery with its dehumanizing circumstances that had fueled the perceptions of white colonists that blacks were less than their equals.\textsuperscript{114}

This emphasis on the humanity of blacks, however, coexisted with the racialist underpinnings of republican ideology concerning the capacity for self-government.\textsuperscript{115} Those weighty responsibilities demanded the possession of reason, self-subordination, and commitment to the public good, attributes that the British-descended colonists linked to the Anglo-Saxon cultural heritage that they brought with them to North America—its ethnicity, language, religion, and political institutions.\textsuperscript{116} By contrast, the prevailing 17th- and 18th-century view was that blacks lacked moral discrimination.\textsuperscript{117} Glaring examples of this view exist from all periods of the 18th century and from all regions of British North America.\textsuperscript{118} The assumptions about blacks’ brutality and inhumanity encompassed the view that they were hypersexualized. References to sexual excess

\begin{itemize}
\item[114.] \textit{Id.} at 272, 274-76.
\item[115.] For a discussion of this racialist understanding of the requirements of republicanism, see Matthew Frye Jacobson, \textit{Whiteness of A Different Color: European Immigrants and the Alchemy of Race} 15-31 (1998).
\item[116.] As Jacobson points out, the colonial charters were full of references to the colonists’ sense of their own elevated state of religious and political enlightenment, and their intention to domesticate and civilize the “savage” people then occupying the land. \textit{Id.} at 23-31.
\item[118.] A few illustrations should suffice. In 1701 Boston merchant John Saffin, responding to Samuel Sewall’s antislavery piece, justified slavery in part by impugning blacks as “Libidinous, Deceitful, False, and Rude,” and as exhibiting “Mischief and Murder in their very eyes.” \textit{Jordan, supra} note 20, at 199-200. The preamble to the South Carolina Code, which appeared in 1696 and was republished in 1735, described “negroes and other slaves” as having “barbarous; wild, savage natures,” tending to “disorders, rapines, and inhumanity.” \textit{Id.} at 109-10. In 1741, during a series of prosecutions for an alleged conspiracy among slaves to burn down various public buildings, a convicted black man was told in court that most of his “complexion” were, in their “very Nature and Temper . . . degenerated and debased below the Dignity of Humane Species . . . \textit{Id.} at 119.
\end{itemize}
among black men and women;\textsuperscript{119} the supposition that black women were particularly sensual;\textsuperscript{120} and the anxious sense that black men possessed an overpowering sexual drive directed especially toward white women\textsuperscript{121} all contributed to a belief that blacks were defined by animal instinct.\textsuperscript{122}

Reinforcing this sense of blacks' overriding physicality and sexuality was a conception that they lacked mental acumen.\textsuperscript{123} During the prerevolutionary era alone, the public debate over slavery generated a cognate dispute concerning blacks' intellectual capacities. Articulate defenders of blacks' innate abilities such as Anthony Benezet and Benjamin Rush\textsuperscript{124} had to counter broad assertions that blacks were unequal to whites.\textsuperscript{125}

This conception of blacks' degraded character and capacity, in turn, had complicated, partly European origins. To a large extent this belief drew on early attempts at phylogenetic classification via the Chain of Being, a hierarchical representation of living species that located African blacks slightly above orang-utans.\textsuperscript{126} By the 18th century, the subordinate position of blacks assumed a pseudoscientific cast, as when a study of the

\begin{itemize}
\item \textsuperscript{119} Id. at 159-60.
\item \textsuperscript{120} Id. at 150-51. This belief was accompanied by the sense that black women were morally responsible for white men's "transgressions." Id.
\item \textsuperscript{121} Id. at 151-152.
\item \textsuperscript{122} Id. at 232-234.
\item \textsuperscript{123} JORDAN, supra note 20, at 187-89, 282, 304, 305-08.
\item \textsuperscript{124} Id. at 282, 283, 286-87.
\item \textsuperscript{125} For example, the unknown author of Personal Slavery Established argued that "[t]he opinion of [Africans'] irrationality is so well supported by facts, that to those acquainted with them, I need advance very little on the subject (emphasis in original) Id. at 304-305. An opponent of Benjamin Rush's environmentalist argument posited that "it seems probable that [the blacks] are a much inferior race of men in every respect. We have no other method of judging, but by considering their genius and government in their native country." Id. at 306-07. Jordan indicates that the writer, Richard Nesbit, later changed his views toward blacks. Apparently mercurial throughout his life, Nesbit eventually lost his sanity. Id. at 306.
\item \textsuperscript{126} Id. at 219, 226-27, 229, 305. As Jordan has noted, these misconceptions had originated centuries earlier upon the first exposure of the British to West Africa, where the existence of unfamiliar darker-skinned peoples and apes that bore a strong resemblance to human beings was discovered virtually at the same time. Id. at 29, 229. Among the pernicious myths that evolved from this coincidence was the belief that African blacks were the progeny of apes, that apes were the result of breeding black persons with
configuration of various human and animal skulls "suggested" a continuum in the prominence of the jaw in which blacks were located between apes and Europeans.\(^\text{127}\)

The assertion that blacks were intellectually inferior also derived from the speculations of the philosopher David Hume, whose pronouncements carried considerable weight among Enlightenment thinkers in Europe.\(^\text{128}\) Characterizing blacks as "naturally inferior to the whites," Hume based his assessment on an asserted absence of "ingenuity" among enslaved blacks in America and Europe.\(^\text{129}\) Immanuel Kant, writing in 1764, summarily dismissed the logic of a black man's reasoning solely because of his color.\(^\text{130}\) In American colonies Hume's influence was evident in the proslavery writings of the 1770s.\(^\text{131}\) Perhaps the most prominent American expression of Enlightenment views was Thomas Jefferson's *Notes on the State of Virginia*, written in the early 1780s. Discussing a proposed Virginia law that would free all slaves born after its adoption and deport them from the state, Jefferson rationalized enforced emigration by invoking, along with the prejudices of whites and blacks' memories of past injuries, the "real distinctions which nature has made" between whites and blacks.\(^\text{132}\)

\(^{127}\) Peter Camper's studies of anatomy had suggested this continuum. Nonetheless, Camper himself disclaimed that he had inferred from these physical observations deficiencies in black persons vis-a-vis Europeans. *Id.* at 225, 230.


\(^{129}\) JORDAN, *supra* note 20, at 253. Hume's commentary was included in a footnote added in 1753 to the essay "Of National Characters," which had appeared in 1749. In the same footnote, Hume went on to disparage evidence of a black man's erudition: "In JAMAICA indeed they talk of one negro as a man of parts and learning; but 'tis likely he is admired for very slender accomplishments, like a parrot, who speaks a few words plainly," *Id.* at 253.

\(^{130}\) GATES, *supra* note 128, at 10-11.


\(^{132}\) THOMAS JEFFERSON, WRITINGS 264 (Merrill D. Peterson ed., 1984). In terms that resonated with Hume's writing, Jefferson enumerated
Adams's Hybridized Representation of the Racial Other

Adams's characterization of Attucks as a racial outsider neither accepted the humanity of blacks on a parity with whites nor entirely embraced Hume's conception of black inferiority. Rather, Adams drew on classical literary models and European associations of blacks with savagery and violence to create a figure who was mythic and demonic. Relying in part on Attucks's physical attributes (Attucks's height—six feet, two inches—apparently was considered to be prodigious at that time), Adams emphasized that Attucks was an imposing figure, with extraordinary strength:

[N]ow to have this reinforcement coming down under the command of a stout Molatto fellow, whose very looks, was enough to terrify any person, what had not the soldiers then to fear? [Attucks] had hardiness enough to fall in upon them, and with one hand took hold of a bayonet, and with the other knocked the man down.\(^\text{134}\)

With looks that would "terrify," Attucks resembled a monster who had invaded Boston, and, together with other "rabble" outsiders like "Carr from Ireland," had wreaked havoc at the risk of Boston's good name.

Adams's combined attention to Attucks' race and aggressiveness, reinforced by the possibility that Attucks was an escaped slave, suggest that Adams sought to exploit a sense of vulnerability to a slave rebellion.\(^\text{135}\) Although the enslaved population was smaller in New England than in other parts of the colonies, the association of blacks with a violent overthrow of the social order was an abiding concern within colonial culture. And, as historian Winthrop Jordan notes, bound up with this sense of vulnerability was a subtext of sexual threat.

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these asserted natural differences, citing blacks' inferior reasoning ability, a "dull, tasteless" imagination, and a culture lacking painting, sculpture, or poetry. \(\text{Id. at } 266-267.\)

\(^{133}\) Zobel, \(\text{supra note } 9, \text{at } 191.\)

\(^{134}\) WROTH & ZOBEL, \(\text{supra note } 16, \text{at } 269.\)

\(^{135}\) KENNETH L. KARST, BELONGING TO AMERICA: EQUAL CITIZENSHIP AND THE CONSTITUTION 46 (1989); JORDAN, \(\text{supra note } 20, \text{at } 115, 152-153.\)
Though little is known of Attucks’ ancestry, he was identified as a “mulatto,” the product of a racial mixture.\(^\text{136}\)

During the colonial era mixed-race unions were fairly common, and, in the 18th century, were perhaps more prevalent than in subsequent periods.\(^\text{137}\) Perhaps for this reason many white colonists were concerned about the implications of racial mixing for the integrity of their ethnocultural stock.\(^\text{138}\) Some colonies responded by adopting laws that prohibited such unions,\(^\text{139}\) or, more ominously, by prescribing castration as a punishment for black males.\(^\text{140}\) Although mixed-race marriages between blacks and whites more generally involved white men and black women, there is some contemporary evidence that in New England the pattern was reversed.\(^\text{141}\) Boston merchant Samuel Dexter indicated as much in correspondence to Dr. Jeremy Belknap from 1795.\(^\text{142}\) And there are some documented cases of marriages between black men and white women from this period, noted in Lorenzo Greene’s study of

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136. Among the staples of Boston’s heritage tourism industry is a special edition of a biography of Attucks, first published in 1973 by Edmund Curley, which asserts that Attucks is a “full-blooded black man.” EDMUND F. CURLEY, CRISPUS ATTucks: THE FIRST TO DIE (1998) (1973). In the book’s Preface, Curley explains that “mulatto” was a term used by whites in the 18th Century to describe phenotypically light-skinned black people, and that the use of that appellation in Attucks’s case did not signify that Attucks was partly white. He continues that there is “no definite basis for his having anything but so-called black blood.” Id. In linking race to blood content, Curley seems to have accepted a by-then-discredited biological understanding of race, the same understanding that could attribute black identity to a person having a single drop of “black blood” coursing through his veins. See, e.g., SARAH CHINN, TECHNOLOGY AND THE LOGIC OF AMERICAN RACISM 96-97 (2000). However, Curley’s racial characterization of Attucks was surely accurate in the sense that Attucks was socially constructed as a black man, regarded as a racial other.

137. JORDAN, supra note 20, at 137.

138. Id. at 136, 142-43.

139. All of the southern colonies and two northern provinces enacted such laws. Id. at 138-39.

140. Id. at 154-156.

141. Id. at 138.

blacks in colonial New England. Whatever their actual distribution, and despite evidence that many non-marital unions involved white men and enslaved black women, the prevailing cultural assumption was that the impetus for mixed-race sexual union came from black men. Against this background of beliefs, Adams’s representation of Attucks resonates with existing anxieties about sexual violation, drawing on the fear that the white community would be “undone” by a black man.

Attucks’s physicality and brute force were complemented by a formidable presence. In fact, in Adams’s hands Attucks appeared as a man of commanding influence over his comrades-in-arms. As if in counterpoint to Paul Revere’s reference to the “[British] Barbarians grinning o’er their Prey” in the inscription beneath his celebrated engraving of the “ Bloody Massacre,” Adams described the sailors whom Attucks urged on as his “myrmidons”—an allusion to the followers of Achilles who, descended from ants, became known for their fanaticism and “savage brutality.” Like the ferocious Achilles hungry for revenge after the death of his squire Patroclus, Attucks emerged in Adams’s narrative as fearless and

143. Greene mentions clergyman Lemuel Haynes, son of an African man and white mother and married to a white woman, cites evidence of a marriage between a black man and a white woman in Vermont, and refers to records of marriages from Charlestowne, Rhode Island. Id. at 202.

144. Id. at 204-205.

145. This perception replicates the pattern of beliefs concerning the assumed sexual pairing of apes and blacks, which had been imagined as involving only male apes and black women. In Jordan’s stark terms, the libido was understood as “thrusting upward from below.” Id. at 238-239.


147. A reproduction of Revere’s line engraving appears in Kaplan, supra note 44, at 7. Parchment-paper reproductions of the lithograph are also marketing staples of Boston’s heritage tourism industry.


awe-inspiring. Sharing Achilles’s maniacal fervor, Attucks’s “mad behavior” dominated the scene, necessitating the soldiers’ response.

Adams’s use of Achilles’s character in the *Iliad* may have achieved the desired effect upon the jury; they credited the theory that the soldiers acted out of legitimate fear for their lives. That it occurred to Adams to invoke a mythic narrative is more interesting; his use of an epic parallel suggests that it was possible for an 18th-century colonial audience to imagine a black man—disenfranchised, possibly an escaped slave—in a heroic stance. Yet there was an ironic, if not parodic, turn in invoking the story of Achilles. Attucks, cultural pretender in the white, anglocentric world of colonial Massachusetts, did not remain on top for long; his ferocity and excess in the challenge to the soldiers condemned him to an ignominious, bloody end. The very qualities that supported Attucks’s resemblance to Achilles ultimately secured his permanent exclusion from the community he had presumed to join.

Demonizing the black body as alien and menacing, Adams exculpated the British soldiers and foreclosed a prosecutorial counternarrative of complicity on the part of Boston’s populace. Using Attucks as scapegoat, Adams conjured up a subversive interloper who was, in appearance, temperament, and obscure origin, distinctly different from the relatively homogeneous Boston community bound together by a shared ethnic, linguistic, and political heritage. By foregrounding these differences between Attucks and the white colonists, Adams posited an ethnocultural conception of citizenship (using “citizenship” here in Alexander Aleinikoff’s sense of membership in a community) and ignored other indicia, particularly Attucks’s participation in what was quintessentially a political event, and his apparent sense of comradeship and identifica-

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150. Id. at 374.
151. Condit and Lucaites, supra note 3, at 26-27, 44, 48, 58-61. See also supra text accompanying note 96.
152. See, e.g., Aleinikoff & Rumbaut, supra note 5, at 1-2.
153. Bosniak, supra note 6, at 470-479. Cf. Young, supra note 64, at 590 (suggesting that it was the white shoemaker George Hewes’s participation in the Boston Massacre—joining the crowd against the British soldiers, submit-
tion with other townspeople.\textsuperscript{154} Invoking the authoritative, reasoned discourse of law, Adams's narrative appeared to rationalize an exclusionary model of membership at odds with the egalitarian ethos identified in the Town's original narrative of the Massacre.\textsuperscript{155}

\textbf{NINETEENTH-CENTURY REARTICULATIONS OF THE BOSTON MASSACRE}

The Uses of Crispus Attucks in Abolitionist Discourse

Arguably, a confluence of religious, political, and social conditions in 18th-century Massachusetts made possible these disparate versions of Crispus Attuck's role in the Massacre. The

\begin{flushleft}ting a deposition and attending other public meetings concerning the events of March 5, apparently testifying in the first of the trials—that had made him a "citizen, a political man.")\
\end{flushleft}

\textsuperscript{154} Bosniak, \textit{supra} note 6, at 479-488. James Kettner has argued that in the Revolutionary era, changes in colonists' status from British subjects to American citizens entailed the choice to affiliate—volitional allegiance—and a corresponding acceptance by the new political community. Kettner, \textit{supra} note 6, at 232, 234, 241-242. Under this view of citizenship, Attucks's implicit offer of allegiance would not qualify him as a citizen because, whig rhetorical strategies aside, under prevailing ethnocultural assumptions, Attucks would not have been considered eligible for acceptance in the new polity.

\textsuperscript{155} There is some evidence that Adams was prepared to give Crispus Attucks a vindication of sorts, shifting blame this time to the tory administration. A July 1773 entry in Adams's diary contains a draft of a letter to Thomas Hutchinson, which he apparently intended to publish in a newspaper, though there is no record of publication. Letter, 2 JA \textit{Diary}, \textit{supra} note 58, at 85. In rhetoric that bore all the earmarks of whig orthodoxy, the writer ascribed moral agency and blame to Hutchinson, absolving the soldiers of responsibility for the Massacre in the process:

\begin{quote}
To Tho. Hutchinson

Sir

You will hear from Us with Astonishment. You ought to hear from us with Horror. You are chargeable before God and Man, with our Blood.-The soldiers were but passive Instruments, were Machines, neither moral nor voluntary Agents in our Destruction more than the leaden Pellets, with which we were wounded.-You was a free Agent.You acted, coolly, deliberately, with all that premeditated Malice, not against Us in Particular but against the People in general, which in the Sight of the Law is an ingredient in the Composition of Murder. You will hear further from Us hereafter.

Crispus Attucks. \textit{Id} . at 84-85.
\end{quote}
“high grade of political culture”\textsuperscript{156} that Boston had attained and the implications of Puritan doctrine that all persons were equal before God\textsuperscript{157} supplied an ideological basis for the egalitarian, republican discourse of the Boston Massacre funeral rites and commemorative orations. However, the colonists’ consciousness of uniqueness also supported a sense of “tribalism.” That sense of insularity, reinforced by the colonists’ ethnic homogeneity, bred a narrow ethnocultural conception of “community.”\textsuperscript{158} When, in 1790, the new federal Congress first legislated the terms for acquiring citizenship by naturalization, restricting those eligible to apply to “free white persons” (a limitation which remained inscribed in the law until 1952), it acted consistently with prevailing racialized understandings concerning the capacity for self-government.\textsuperscript{159}

In the 19th Century, black abolitionists deployed 18th-century sources to shape a discourse of citizenship and equal rights. Adapting the prevailing whig account of the Massacre to their own narrative purposes, black abolitionist rhetors enshrined Attucks as the heroic figure of the Massacre, and inflected the narrative to focus directly on the implications of racial difference—exclusion from citizenship. For black rhetors, the campaign to eradicate slavery was complicated by the emergence in 1817 of the American Colonization Society. The colonizationists, led by Henry Clay, argued that ineradicable physical differences and existing racial prejudices foreclosed

\textsuperscript{156} Address of John Fiske, in A Memorial, supra note 24, at 86.

\textsuperscript{157} Jordan, supra note 20, at 200-204; Nash, supra note 99, at 10; Bailyn, supra note 14, at 242-245.

\textsuperscript{158} See, e.g., Bercovitch, supra note 110, at 113.

\textsuperscript{159} Ian F. Haney Lopez, White By Law: The Legal Construction of Race 1, 42 (1996). Similarly, when the new Congress enacted legislation governing a uniform militia, it limited its membership to “free able-bodied white male citizen[s].” Jacobson, supra note 115, at 25.

In 1870, an exception was written into the naturalization law for persons of African ancestry. However, in 1882, Congress altered the naturalization laws by specifically disqualifying persons from China from naturalizing (and from entering the United States). Haney Lopez, supra, at 37-38, 44. Between 1878 and 1952, U.S. courts heard fifty-two cases posing the question whether various applicants for citizenship from Asian and Middle Eastern countries that had not been excluded specifically as China had been qualified as white for purposes of the naturalization statute. Id. at 3-4, 43-44.
the possibility of peaceful coexistence between blacks and whites. As a result, they favored the collective emigration of free blacks to a location outside of the United States, presumably in Africa. 160 Suggesting continuities with Jefferson's rationale for enforced migration in Notes on the State of Virginia, 161 the society's proposal held out colonization as the vehicle for a gradual abolition of slavery while enabling free blacks to bestow the benefits of western culture on Africa. 162

Black rhetors countered with arguments grounded in the egalitarian language of the Declaration of Independence. A reasoned argument for independence, the Declaration's resemblance to a legal pleading 163 invested it with an authority that they invoked as a sufficient basis for equal citizenship. 164 David Walker's aggressive rhetoric in Appeal to the Colored Citizens of the World illustrated this oppositional use of the Declaration. 165 Walker discerned in the colonizationists' proposals the invidious purpose of separating slaves and free

160. Condit & Lucaites, supra note 3, at 63-64; Wald, supra note 2, at 63.
161. See Jefferson, note 132, supra and accompanying text.
162. Condit & Lucaites, supra note 3, at 65.
163. For a discussion of the point of resemblance between the Declaration and the conventions of a bill in equity, a kind of pleading which seeks judicial relief on the basis of principles of justice and equity rather than on common-law grounds, see Peter Charles Hoffer, The Declaration of Independence as a Bill in Equity, in THE LAW IN AMERICA 1607-1861 196-204 (1989).
164. The Declaration was a more useful document for this purpose, at least in a formal sense, than the Constitution. Taken as a whole, the Constitution's provisions relating to slavery offered questionable support for citizenship claims. Its silence on the subject of slavery other than to postpone cessation of the slave trade until 1808 permitted individual states to maintain the institution within their borders. The provision in Article One, section two basing Congressional representation among the states on the number of free inhabitants within a state and three-fifths of all other persons benefited southern states having large enslaved populations. Donald G. Nieman, Promises to Keep: African-Americans and the Constitutional Order 10-12 (1991). The guarantee in Article Four, section two, that the laws of a non-slave state could not be used to interfere with the claim of a slaveowner seeking to recapture a fugitive slave, authorized extraterritorial operation of state laws recognizing slavery. Id. at 12.
165. Condit & Lucaites, supra note 3, at 85, 87-88.
blacks to mitigate the risk of a rebellion.\textsuperscript{166} He contested their exclusionary implication,\textsuperscript{167} by emphasizing the inclusiveness of the Declaration's message: "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!"\textsuperscript{168}

Similarly, Frederick Douglass used the Declaration to highlight his exclusion from membership in the American polity. Addressing the Rochester Antislavery Sewing Society on July 5, 1852, Douglass asked pointedly:

Fellow citizens, pardon me, allow me to ask, why am I called upon to speak here to-day? What have I, or those I represent, to do with your national independence? Are the great principles of political freedom and of natural justice, embodied in that Declaration of Independence, extended to us? This Fourth July (sic) is yours, not mine." (Emphasis in original)\textsuperscript{169}

Emphasizing his exclusion in fact, Douglass nonetheless asserted the right to membership in the polity, addressing the audience as "fellow citizens."\textsuperscript{170} Douglass could only ground his status as citizen in the natural-rights principles embraced by the Declaration of Independence. At the same time, he acknowledged the gulf that separated him from his white auditors in terms of the psychological and political dimensions of national citizenship.\textsuperscript{171} As David Walker had posited blacks' disenfranchisement in contradistinction to whites by referring to whites as the "Americans,"\textsuperscript{172} Douglass made clear that he

\textsuperscript{166} Id. at 46-47, 54-55.
\textsuperscript{167} Walker wrote: "Tell us no more about colonization, for America is as much our country, as it is yours." \textsc{David Walker, Appeal to the Colored Citizens of the World} 69-70 (Charles W. Wiltse, ed. 1965) (1830)(hereinafter \textsc{Walker's Appeal}).
\textsuperscript{168} Id. at 75.
\textsuperscript{169} Address of Frederick Douglass on July 5, 1852, reprinted in Philip S. Foner, Blacks in the American Revolution 142-143 (1975). For a more extended analysis of Douglass's "July 4th" oration, see Wald, \textit{supra} note 2, at 89-93.
\textsuperscript{170} Id. at 131.
\textsuperscript{171} See Bosniak, \textit{supra} note 6, at 455.
\textsuperscript{172} See, e.g., \textsc{Walker's Appeal, supra} note 167, at 15, 42-43, 65-66.
shared no sense of belonging or identification with white Americans.

If the Declaration of Independence served black abolitionists as a "constituting document," the events of the Boston Massacre—involving human motivation, agency, and causality—had a distinct narrative value, giving concrete expression to the Declaration's abstract propositions. As Attucks and the other slain civilians had become symbols of resistance for Boston whigs during the prerevolutionary period, mid-19th-century abolitionists based in Massachusetts understood the "political utility of memory" in the rhetorical embrace of Attucks and consolidation of his identity as a "colored" man. Influential among these activists was William Nell, a black journalist and historian whose book Colored Patriots of the American Revolution honored soldiers of the "colored" (Negro) race who fought against the British. In 1851, Nell petitioned the Massachusetts legislature to authorize funding for a monument to Attucks as the first man to die for the revolutionary cause. The petition was denied on the basis that an eleven-year-old boy had been killed during the Massacre. Apparently, the legislature conflated the details of the Massacre with those of the incident in which eleven-year-old Christopher Seider had been killed by a suspected tory informer. Whether simply careless history or a product of race- and class-based perceptions, the legislature's associating Attucks with violence resonated with Adams's emphasis on Attucks's ferocity. In rhetoric reminiscent of tory diatribes against Boston's "rabble," a contemporaneous statement in the Boston Transcript, apparently in response to news of Nell's petition, condemned Attucks as an agitator and incendiary.

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175. William C. Nell, Colored Patriots of the American Revolution, with Sketches of Several Distinguished Colored Persons: To which is Added a Brief Survey of the Conditions and Prospects of Colored Americans (1868) (1855).
176. Id. at 13-14.
177. See supra notes 26-27 and accompanying text.
178. Nell, supra note 175, at 16.
In the account of Attucks's heroism in Colored Patriots, Nell accurately, if selectively, reported Adams's words from the closing argument in the trial of the soldiers. As much as the 18th-century whig narrators and Adams himself, Nell was a strategic advocate, emphasizing details that served his rhetorical purpose. Suppressing the ironic sense with which Adams had characterized Attucks as a hero, Nell reported only that Adams had "admitted that Attucks appeared to have undertaken to be the hero of the night, and to lead the people." 179

Thus, by eliding the legal context in which Adams presented Attucks as a bloodthirsty interloper and provocateur, Nell sidestepped details that would not serve his heroic narrative.

Nell's efforts to install Attucks as an unsung and misunderstood hero extended to spearheading the revival of Boston's yearly observance of March 5, renamed "Crispus Attucks Day." 180 Shifting the emphasis of the commemoration to Attucks as chief protagonist of the Massacre, the organizers of the observance sought a suitable link to antislavery discourse. 181 In proceedings at Faneuil Hall, the radical white abolitionist Wendell Phillips 182 commended Attucks's bravery and the spirit of defiance with which he had taken on the British soldiers. 183 In what was essentially an "attesting" 184 intro-

179. Id.
181. Philip Foner points out that the decision to resume the observance was spurred by opposition to the Dred Scott case, see Foner, supra note 169, at 40, in which the Supreme Court took an expansive view of the rights of slaveholding states while envisioning a restrictive notion of American citizenship. See notes 192-194 and accompanying text infra.
182. A cousin of Dr. Oliver Wendell Holmes, Phillips espoused egalitarianism and pluralist thought, and was aggressively active in the abolitionist movement, from high-profile efforts to thwart recovery of slaves recaptured under authority of the Fugitive Slave Act to serving as one of John Brown's eulogists. Louis Menand, The Metaphysical Club: A Story of Ideas in America 15-16, 27, 29, 31(2001).
184. See William L. Andrews, To Tell A Free Story: The First Century of Afro-American Autobiography, 1760-1865 26 (Illini ed. 1988) (1986). In the 18th and 19th centuries it was customary for prominent white persons to attest to the authenticity of the writings of black authors, most of whom were enslaved or fugitives from slavery. Although Nell was a free black living in Massachusetts, the publishers of his book apparently con-
duction to the pamphlet edition of Nell’s book, Phillips invited readers to consider the evidence Nell had adduced of black men’s\textsuperscript{185} intellectual, political, and military accomplishments. Phillips recognized that it was necessary to disseminate the evidence Nell had gathered if there was any hope of countering the exclusionary logic that kept blacks from participating as countrymen and women with a “contemptuous” white community, “reluctant” to acknowledge equality.\textsuperscript{186} Harriet Beecher Stowe, another attester of Nell’s, emphasized the poignant irony of the brave service of soldiers of the “colored race,” despite their exclusion from the circle of citizenship: “It was not for their own land they fought, not even for a land which had adopted them, but for a land which had enslaved them, and whose laws, even in freedom, oftener oppressed than protected. Bravery, under such circumstances, has a peculiar beauty and merit.”\textsuperscript{187} Stowe hoped that both the content of the stories and the fact that their narrator was himself a “colored man” would help to overcome the inaccurate assumption shared by many whites that black people were not accomplished.\textsuperscript{188}

The rhetoric of racial merit coexisted with a keener-edged antislavery discourse following the adoption of the Fugitive Slave Law in 1850. When implementation of the law resulted in widely publicized returns of escaped slaves to southern slaveholders, abolitionist rhetors invoked the memory of Attucks in terms that resonated with the early whig accounts of the Massacre. Assuming that these abolitionists had access to the text of Adams’s argument. It seems fair to imagine that for strategic reasons these rhetors, like Nell, chose to ignore Adams’s demonizing rhetoric rather than to attack it frontally. In any event, in challenging the exclusionary practices of Ameri-

\begin{itemize}
\item \textsuperscript{185} Phillips appeared to use the descriptors “colored” and “black” interchangeably in the Introduction.
\item \textsuperscript{186} NELL, supra note175, at 7-8.
\item \textsuperscript{187} Introduction by Harriet Beecher Stowe, in NELL, supra note 175, at 5-6.
\item \textsuperscript{188} Id. at 5.
\end{itemize}
can legal and political culture, prominent white abolitionists proffered an alternative version of national enfranchisement, positing the "Americanness" of the person of color whose blood had been spilled in the cause of liberation. Denouncing Boston's role in implementing the law, Anson Burlingame noted in an address at Fanueil Hall that those who were complicit with the law had passed "over ground wet with the blood of Crispus Attucks, the noble colored man, who fell in King Street before the muskets of tyranny.\(^{189}\) Two years later, commenting on the capture and return of Anthony Burns, Reverend Theodore Parker recurring to this image as the "spot where... the negro blood of Christopher [sic] Attucks stained the ground.\(^{190}\) Addressing Congress on the recapture of Burns, Massachusetts Senator Charles Sumner invoked Attucks's resistance to British slavery, noting that where the "disgusting rites of sacrificing a human being to slavery were lately performed, was the spot which was first moistened with American blood in resisting slavery, and among the first victims was a colored person."\(^{191}\)

These abolitionists' efforts to impose rhetorically an ethos of racial equality did not dislodge the avowedly exclusionary logic of antebellum legal doctrine. The most pernicious expression of that logic was the United States Supreme Court's ruling in *Scott v. Sandford*\(^{192}\), which upheld the denial of Scott's petition to be declared a free man in Missouri, a slave state, after his former owner had taken him to a state and a territory

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189. *Nell*, supra note 175, at 19.
190. *Id.*
191. *Id.* at 20. The references to Attuck's bloodshed consecrating the ground in Boston—metaphor for the animating spirit of resistance, his heroic gesture, and the kinship that crosses ethnocultural lines—would recur in discourse associated with the March on Washington Movement (MOWM) during World War II that, among other things, challenged the practice of demarcating blood donated by blacks. *Chinn*, supra note 136, at 126, 128. Demonstrating the connections between the language of good citizenship and the discourses of wartime blood donation, *id.* at 99-111, Chinn analyzes how the MOWM, in turn, engaged this language of citizenship to develop the argument that the segregation of black blood, and of black American soldiers, deprived blacks of the opportunity to participate in the national political community on equal terms with whites, *id.* at 117-132.
192. 60 U.S. 393 (1857).
that prohibited slavery. The opinion of Chief Justice Taney for the Court ruled that the petition should have been dismissed for lack of jurisdiction. Taney concluded that when the Declaration of Independence and the Constitution were drafted, neither those persons brought into the country as slaves nor their descendants—even those who had been emancipated—were understood to form part of the political community. Alternatively, assuming that the trial court had jurisdiction to hear the case, the Court ruled that the defendant was entitled to judgment on the ground that the sojourn in a free state did not nullify Missouri's law recognizing slavery and that the Missouri Compromise of 1820, which had prohibited slavery in the portion of the territory to which Scott had been taken, was an unconstitutional interference with property rights.

Within a dozen years of the Scott case, following the defeat of the South in the Civil War, the ratification of the 14th Amendment constitutionalized national citizenship and equality before the law, at least in the formal sense, for black Americans. But, as historian Eric Foner has shown, the federal

193. Id. at 407-427.

The court rationalized its conclusion in terms that resonated with 18th-century Enlightenment assumptions that blacks were inferior both by nature and culture:

[Negroes and mulattoes] had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect; . . . that a perpetual and impassable barrier was intended to be erected between the white race and the one which they had reduced to slavery. . . and which they then looked upon as so far below them in the scale of created beings, that intermarriages between white persons and negroes or mulattoes were regarded as unnatural and immoral, and punished as crimes. Id. at 407-409.

194. Id. at 455. Though a majority of the Court concurred that the Missouri Compromise was unconstitutional, apparently only a plurality of the justices joined in Taney's ruling that no black person could claim the status of citizen.

195. Ratified in 1865, the 13th Amendment had abolished slavery. U.S. Const., amend. XIII. Effective in 1868, the 14th Amendment established the right of all persons born or naturalized in the United States to national citizenship and citizenship in the state of their residence, the right to due process, and equal protection of the law. Id. at amend. XIV, cl. 1. In 1870, ratification of the 15th Amendment barred denial of suffrage on the basis of race. Id. at amend. XV. For a discussion of the political background against
laws and policies crafted by Radical Republicans to effect a political reconstruction in the South did not imply social equality for blacks. Many advocates of egalitarianism believed that whites (as the more "manly" Anglo-Saxon race) were superior to blacks.\textsuperscript{196} For these supporters of Reconstruction, equality meant "equal standing in the polity and equal opportunity in a free labor economy."\textsuperscript{197} The well-documented failure of Reconstruction policies to secure equality for blacks—the persistence of an exclusionary logic—was reflected in the apartheid enacted by Jim Crow laws in the South and biases and social taboos against interracial contact in the North.\textsuperscript{198}

Recognizing these disjunctures between Constitutional discourse and public and private behavior, Reconstruction-era black rhetors continued to find Attucks serviceable as a symbol of heroic sacrifice, whose participation in a national origin- 

ary moment authenticated blacks' claim to equal citizenship. In local observances of the American Centennial in 1876, for example, black activists and academics addressed the role of Attucks and other blacks in the American Revolution.\textsuperscript{199} George Washington Williams, a cleric and lawyer from Cincinnati who would write the two-volume \textit{A History of the Negro Race in America from 1619 to 1880}, highlighted the participation of Attucks and others in the colonists' move toward independence: "If any class of people in our composite nationality

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\textit{which the Civil War Amendments were adopted, see Nieman, supra note 164, at 55-77. See also Eric Foner, Reconstruction: America's Unfinished Revolution 1863-1877 251-261, 529-531 (1988)(discussing core ideas animating 14th Amendment).}
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\textit{196. Eric Foner, supra note 195, at 230-231.}
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\textit{197. Id. at 237.}
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\textit{198. See, e.g., Nieman, supra note 164, at 104-113, 119-120.}
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\textit{199. See Foner, supra note 169, at 4-5. By the Civil War era, the Massachusetts Historical Society had become open to the idea that Crispus Attucks performed heroic service for the revolutionary cause. In 1862, George Livermore delivered a paper to the Society citing Attucks's role in the Boston Massacre to illustrate the absence of prejudice toward blacks during the Revolutionary period. George Livermore, An Historical Research Respecting the Opinions of the Founders of the Republic on Negroes as Slaves, as Citizens, and as Soldiers 90-92 (1863). The minutes of the Society's August 1862, meeting indicate that Livermore was commended for his work and encouraged to continue his investigations. Id. at v-vi.}
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have any claims upon the Union, if any class of people after the Puritan can justly claim a part in establishing the colonies as independent states, it is the American Negro." Abolitionist Lewis Hayden, addressing the Colored Ladies Centennial Club in Boston, cited the country's "indebtedness to the colored race." Howard University Professor John Mercer Langston urged African-Americans to honor the memory of Crispus Attucks, who "gave up his life one hundred years ago on the sacred soil of Massachusetts in order to make the independence we now celebrate possible."

Even as they asserted that the narrative of American nationality was capacious enough to include blacks, these abolition-and Reconstruction-era renderings of the Boston Massacre, refocused largely upon the actions of Attucks, continued to invoke the logic of exclusion. Drawing attention to the ways in which Attucks had served as true citizen of the emerging republic, black rhetors' use of Attucks depended for its effectiveness on the disparity between his contribution to the resistance effort—his engaged participation and solidarity with the other colonists— and blacks' continuing exclusion from the privileges of full membership in the national community.

Exceptionalism, Assimilation, and a Rhetoric of Rights: The Dedication of the Attucks Memorial

Near the century's end, Nell's long-frustrated effort to raise a monument to Attucks was vindicated. Spurred by a citizens' petition, the Massachusetts legislature adopted a resolution appropriating up to $10,000.00 to build a marker in Boston commemorating the catalyzing role of the Massacre in the American Revolution. The legislature's action was nothing short of a triumph for civil rights activists, silencing for a time the proponents of the "tory" view who deprecated Attucks and the other "rioters." An expression of civic, as well as

200. Foner, supra note 169, at 5.
201. Id.
202. Id.
203. Address of John Fiske, in A MEMORIAL, supra note24, at 82-83; Statement of Mayor Hugh O'Brien, in A MEMORIAL id. at 46.
racial pride, the unveiling of the monument in Boston Common and the subsequent dedication ceremony at Faneuil Hall on November 14, 1888, brought together a broad assemblage of public officials. Governor Ames of Massachusetts, who had signed the appropriations bill into law, Boston Mayor Hugh O'Brien, United States Senators and Representatives from Massachusetts, patriotic societies, clergy, and organizations associated from the state's black community were among the participants.\footnote{204}

Like the strategically selected rituals of the Boston Massacre orations a century before, the dedication ceremony was an important cultural marker at the intersection of two racially inflected themes. The first, an inclusive rhetoric related in tone to 18th-century celebrations of the Massacre, was adopted by the predominantly white speakers at the event. The second was a self-affirming discourse among black rhetors that, in celebrating the patriotism of black people, advanced their claim to equal participation in the polity. Unlike the heady panegyrics to racial inclusiveness, this discourse was the more faithful to recent history, tempering the hyperbole of the day with a sense of the lived experience of racial disenfranchisement.

The monument that was unveiled at the dedication recalled Revolutionary-era iconography of the Massacre. Twenty-five and a half feet high, it featured a statue of "Free America," represented as a woman of "fiery spirit." Bearing a flag in one hand, and the broken chain of oppression in the other, Free America trampled upon the monarch's crown. The facade of the pedestal depicted the Massacre, with Crispus Attucks in the foreground, inscribed with latter-day authenticating attestations from Daniel Webster ("From that Moment we may date the Severance of the British Empire") and a reconstructed John Adams ("On that Night the Foundation of American Independence was laid").\footnote{205}

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\item \footnote{204.} *Action of the Commonwealth, in A Memorial, supra note 24, at 16; Unveiling the Monument on Boston Common, in A Memorial, supra note 24, at 31-33; Exercises at Faneuil Hall, in A Memorial, supra note 24, at 43.}
\item \footnote{205.} *Attucks Monument in Boston, Negro History Bulletin, supra note 8, at 68.}
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The chauvinistic rhetoric of commemoration celebrated American political exceptionalism—a self-congratulatory claim to an enlightened heritage, marked by an egalitarian ethos, an adherence to the forms of law, and the habit of deliberative discourse. For historian John Fiske, the Massacre constituted a "fresh impetus" to severing the political connection with Britain. Perhaps more importantly, Bostonians' restraint during the legal proceedings—in which the soldiers were "ably defended" by Adams—signified the advanced political consciousness of a population schooled in the town meeting. Celebrating a republic dedicated to "enlarging freedom," this exceptionalist rhetoric posited an inclusive, liberal notion of national citizenship rooted in egalitarianism. The remarks of the Mayor of Boston adopted a similar theme, linking the Massacre with the Revolutionary War and the Declaration of Independence that had "pronounced all men free and equal without regard to color, creed, or nationality." John Boyle O'Reilly's poem "Crispus Attucks" connected this theme of human equality more explicitly with assimilation, an idea that had gained in importance in an era of increasing immigration. Recurring to the abolitionists' blood imagery, O'Reilly invoked the mingling of blood of the "five dying men in the street" to celebrate the blood ties of all of the nation's immigrants, linked by their

206. This exceptionalist discourse has long been associated with the Puritan settlers' cultivated sense of spiritual and political distinctness as a community. See Bercovitch, supra note 110, at 50-58, 61-62, 67, 90-92, 95-108, 112-121. Bercovitch details the Puritans' self-perception as a New Jerusalem, a favored people chosen by God to complete the spiritual redemption of humanity prophesied in the Old Testament. Id. at 60-61, 96-97, 101, 105.

207. Address of John Fiske, in A Memorial, supra note 24, at 84.
208. Given the context of Fiske's address, it is not surprising that Adams's racialized treatment of Attucks was elided in Fiske's references to the defense of the soldiers.
209. Id. at 84-85.
210. Address of William Dupree, in A Memorial, supra note 24, at 37.
211. See Bosniak, supra note 6, at 500-503.
212. Remarks of Hugh O'Brien, in A Memorial, supra note 24, at 47.
shared humanity: "Oh, blood of the people! changeless tide, through century, creed, and race!. . . Indian and Negro, Saxon and Celt, Teuton and Latin and Gaul. . . . There never was separate heart-beat in all the races of men!"214

This rhetorical commitment to an expansive notion of the polity, and the affirmation of "a brave [black American's] death"215 served a plot-line of political exceptionalism. Assuming a broad construction of the idea of citizenship, these narrators offered a generous view of American public life, seen through the lens of majoritarian culture. Their sanguine reading of the legal foundations of national citizenship attached itself to the form of equality contained in the language of the Declaration and the 14th Amendment.216 At the same time, the rhetoric used to support the story of inclusion and exceptionalism at occasions like the dedication of the Attucks Memorial had a double edge. With the growing influence of urban political organizations that traded on ethnic ties with newly arriving immigrants from southern and eastern Europe, the impulse to assimilate was underpinned by an anxious determination to incorporate all new residents into a unitary culture that closely approximated the best of Anglo-Saxon political traditions and social practices.217 It is interesting in this context that John Fiske, the principal speaker at the dedication, in 1894 became the first president of the Immigration Restriction League, organized by a group of Harvard graduates attached to the view of "Teutonic supremacy."218

214. John Boyle O'Reilly, Crispus Attucks, in A Memorial, supra note 24, at 52.
215. Id. at 56.
216. See Condit & Lucaites, supra note 3, at 101-146 (discussing the continuing negotiations and shifting meanings of the concept of equality in public discourse in the last third of the 19th century). See Nieman, supra note 164, at 103-105.
218. See Hartmann, supra note 217, at 18-21. See also Charles Keely, U.S. Immigration: A Policy Analysis 14-15 (1979). Fiske was mainly a figurehead in this organization and did not share the organizers' view that some immigrant groups could not easily be assimilated. Instead, he remained
By contrast, African-American participants in the dedication ceremony addressed racial exclusion directly, calling attention to the gap between public discourse and the still unrealized goal of equality on any level, legal or social. More tempered than the rhetoric of the white speakers, their discourse engaged with the past without the myopia of false optimism. Reverend Eli Smith's invocation at the unveiling of the Memorial set a tone:

We thank Thee that in both [the American Revolution and the Civil War] there were engaged those of an oppressed race, who for centuries had been made to toil as bondmen. We thank Thee for the exhibitions they gave of patriotism, of love of country, when they themselves were without a country. We thank Thee that the first blood of the revolutionary conflict was shed by a black man, a representative of a race with whom so many of us here are identified. We take great pride in the fact that bravely he lost his life battling for the right. . . May it be that Massachusetts shall feel, convinced that the superior Anglo-Saxon political and cultural norms would subsume incompatible foreign elements, although he shared the League’s concerns that the nation’s new ethnicities had shifted the center of gravity away from Anglo-Saxon-dominated New England. Berman, supra note 217, at 250-251.

219. It bears repeating that this gap was reflected in the widespread lynching of blacks in the south in the late-19th and early-20th century. Nieman, supra note 164, at 119-120; Karst, supra note 132, at 65-67, the history of the Jim Crow laws, which accorded blacks nominally equal but separate access to public services, Nieman, supra note 161, at 108-113; Karst, supra note 135, at 62-65, 67-69, and the Supreme Court’s ruling in Plessy v. Ferguson, 163 U.S. 537 (1896), upholding such legislation. In Plessy, the Court held that a Louisiana statute that required intrastate passenger railroads to provide separate accommodations to white and black patrons did not raise the specter of involuntary servitude in violation of the 13th Amendment. Id. at 543. Nor did the provision violate the rights of blacks under the privileges-and-immunities, due process, or equal-protection clauses of the 14th Amendment. Id. at 548. Acknowledging a qualitative distinction between legal and social equality, the Court emphasized that the amendments protected only the legal status of black Americans. Id. at 551-552.

220. When he delivered the address at the Memorial, Smith was pastor of the Third Baptist Church in Springfield, Massachusetts, one of several churches organized by and for the African-American community in Springfield. Conversation with Michele Barker, Connecticut Valley Historical Museum on March 11, 1998. Third Baptist Church 125th Anniversary brochure (on file with author) provides additional historical context. See also James E. Tower, ed. Springfield: Present and Prospective 131 (1905).
that as she by this monument is honoring the dead, and giving courage and hope to a race with whom one of the dead was identified, that so she is doing honor to herself. . . Grant that the time may come. . [when] race or creed shall not enter into the question of the solution of any of our problems of government; but when we shall be indeed United States, and the proudest boast of our citizens shall be that they are American citizens. (Emphasis in original.)

Looking forward to a time when race would not dictate outcomes that denied blacks full and equal citizenship, Smith's invocation did not abandon the centrality of race to the idea of citizenship. Instead, Smith invoked the concept of "colorblindness" in the sense of an affirmative right for racial justice, at a time when race-consciousness in state policy and social practice was linked to racial subordination. Frederick Douglass's letter declining an invitation to speak at the dedication kept the counter-story of present exclusion equally in focus: "Colored men fought with Perry on Lake Erie. Colored men fought at Red Bank in the Revolution. Colored men fought, and fought bravely, at New Orleans, under General Jackson. But no monument commemorates their services." At the same time he recognized Boston's "noble concession to justice and patriotism in the person of one of a hitherto disparaged and despised people."

The rhetoric at the dedication of Attucks's memorial resonated with an exclusionary conception of national citizenship. If John Boyle O'Reilly's image of the "mingling" blood of the five felled civilians seemed to invite an amalgamation of cultures, it must be considered in relation to the larger rhetorical context of exceptionalism. That rhetoric exuded a pride of in-

221. Invocation of Eli Smith, in A Memorial, supra note 24, at 34-35.
222. This meaning is absent from the usage of "colorblindness" in contemporary legal discourse. The United States Supreme Court's reconstructed version of the term, which rejects benign color-conscious classifications to remedy past discrimination, has been critiqued as a conservative cooptation of the idea of colorblindness and the purely formal idea of equal citizenship. See, e.g., Introduction, in Kimberle Crenshaw, Neil Gotanda, Gary Peller & Kendall Thomas, eds. Critical Race Theory: The Key Writings that Formed the Movement xv, xxi, xxviii-xxix (1995) (herein-after Critical Race Theory).
223. Letter of Frederick Douglass, in A Memorial, supra note 24, at 95.
stitutions and expressive culture that was normatively Anglo-Saxon, and to which conformity was expected.\textsuperscript{224} Attucks could be celebrated discursively as part of this tradition because his conduct was explainable—assimilable—to the republican tenets that underpinned American Revolutionary discourse. On this view, Attucks was himself exceptional and not a "typical" black man. Yet, as the ruling in \textit{Plessy} made clear, any willingness to view "the colored race" as capable of being assimilated must be viewed in the exclusionary context of "separate but equal."\textsuperscript{225} And, as the demographics of immigration began to shift away from Northern Europe during this period, nor was the exceptionalist faith in assimilation optimistic that the newer, putatively non-white immigrant groups had the capacity for self-government that would make them amenable to Anglo-Saxon republicanism.\textsuperscript{226} The inclusive accounts at the Attucks Memorial seemed designed to homogenize the effects of cultural difference, reinforcing a narrow sense of what was originary—and what had become normative—for American citizenship.

Revision and Marginalization

Attucks's salience as a cultural symbol linked to black Americans' quest for full citizenship had diminished by the 20th century, especially in relation to narratives of black nationalism that posited a different source of affiliation for American blacks.\textsuperscript{227} In these narratives, Attucks's willing participation in an incident whose significance seemed entirely

\textsuperscript{224} GORDON, \textit{supra} note 213, at 96-98.
\textsuperscript{225} \textit{Plessy v. Ferguson}, 163 U.S. 537, 544, 551-552 (1896).
\textsuperscript{226} JACOBSON, \textit{supra} note 112, at 72-78.
\textsuperscript{227} See, e.g., Vincent Harding, \textit{Beyond Chaos: Black History and the Search for the New Land}, in \textit{JOHN A. WILLIAMS \& CHARLES F. HARRIS}, \textit{EDS., AMISTAD I} 282-289 (1970). Articulating the underpinnings for a Black Studies movement in education, Harding questioned earlier black historians' strivings to include blacks in the national narrative of equality, including their emphasis on blacks' heroism in the Revolutionary era, rather than adopting a "hard and unromantic reading of the experiences of black people in America").
bounded by British bloodlines does not accredit him.228 Interest in Attucks revived for a time when the Boston Massacre’s bicentennial approached,229 and the liberal nationalist discourse of heritage tourism in Boston230 has recuperated Attucks’s heroic status, and his racial identity as a “black man.”231 His serviceability as martyr in these heritage narratives has assured his survival as a cultural artifact, if not as an idea,232 as a “memory practice” in the “complex rhetoric” that comprises a “discourse of memory.”233

Academic historians generally have minimized, if not disparaged, Attucks’s role in the Massacre. Hiller Zobel has described Attucks and company as a “heedless mob.”234 In a variation on Adams’s strategy of deflecting blame, Zobel por-

228. See, e.g., Foner, supra note 169, at 39 (noting black historian Vincent Harding’s refusal to celebrate Attucks’s participation in a “white man’s war”).
229. See, e.g., Kidder, supra note 23, at 41. For example, the NEGRO HISTORY BULLETIN featured an editorial about the Massacre and reprinted Fiske’s address in its March 1970 issue.
230. Boston’s turn to heritage tourism was spurred by the preparations nationally for the U.S. Bicentennial observance in 1976. Bruce Ehrlich & Peter Dreier, New Boston Discovers the Old, in THE TOURIST CITY 265-266 (Dennis R. Judd & Susan S. Fainstein eds., 1999). Attucks’s visibility in this discourse seems tied to the promotional efforts of the industry. For example, the museum shop in the Old State House offers for sale items that highlight Attucks’s role in the national originary narrative. By contrast, locating the Attucks Memorial in an obscure section of the Boston Common can be a challenging excursion for the heritage tourist.
231. Among the staples of Boston’s heritage tourism industry are reprints of Paul Revere’s famous lithograph of the “Bloody Massacre” as well as a special edition of a biography of Attucks, first published in 1973 by Edmund Curley, which asserts that Attucks is a “full-blooded black man.” Curley, supra note 136.
232. BARBARA KIRSHENBLATT-GIMBLETT, DESTINATION CULTURE: TOURISM, MUSEUMS, and Heritage 176 (1998). As the “museum of the consciousness industry,” Kirchenblatt-Gimblett argues, tourism is “where old ideas go to die.” Id.
233. The quoted language is from John Urry’s discussion of the practices by which the heritage industry mobilizes multiple senses and selectively valorizes events and experiences that become memories. John Urry, Sensing the City, in THE TOURIST CITY, supra note 230, at 165-166. Or, as Barbara Kirshenblatt-Gimblett points out, heritage tourism is a new “mode of cultural production” and [it] produces something new.” Kirshenblatt-Gimblett, supra note 229, at 150.
234. ZOBEL, supra note 9, at 194, 197.
trayed the soldiers as victims, likening them to "slaves," who were "only with difficulty remembered as human beings."\(^{235}\) Without the tendentiousness of Zobel, and without focusing on Attucks specifically, legal historian John Phillip Reid indicates that the British soldiers probably believed that they fired to preserve their lives, and that the civilians who gathered on King Street were "rioters," members of a "mob."\(^{236}\) Thomas Bailey, former president of the Organization of American Historians, cited Attucks’s "hooliganism" in a discussion of "mythmakers" in American history.\(^{237}\)

The failure of these cultural narratives to engage with Adams’s scapegoating use of race in the Boston Massacre misses an opportunity to interrogate how Adams’s authority as a narrator, and the imprimatur of "law" that his argument carried, reinforced 18th-century assumptions of cultural hegemony based on color and ancestry.\(^{238}\) Against the concern that history has been mythologized, there is the evidence of Adams’s own suppositions of class and racial superiority:

The death of four or five persons, the most obscure and inconsiderable that could have been found upon the continent, on the 5th of March, 1770, has never yet been forgiven by any part of America. What, then, would be the consequence of a battle in which many thousands must fall,

\(^{235}\) Id. at 194. Deprecating the Boston Massacre monument as an "implausible mass of masonry," Zobel questioned the association of Attucks and the other slain civilians with the end of political enslavement. Id. at 196 (text accompanying photo inset on unnumbered page).

\(^{236}\) Reid, supra note 12, at 189-90, 192, 198.

\(^{237}\) Bailey, supra note 10, at 8. In fact, Bailey seemed prepared to accept none of the claims concerning Attucks—that he was the first to die in the revolutionary cause, that the incident was properly part of the revolution, that Attucks was a "mulatto." Id. . See also Foner, supra note 169, at 39 (noting Attucks’s treatment by 20th century white and black historians).

\(^{238}\) These assumptions have endured, dominating late-20th-century writings of American "paleoconservatives" on the defining role of British culture. See, e.g., John O’Sullivan, America’s Identity Crisis; On the Importance of Immigration; Why Kemp and Bennett are Wrong, 36 National Review (November 21, 1994); Thomas Fleming, A Not So Wonderful Life, in Immigration and the National Identity 146, 152 (Thomas Fleming ed. 1995).
of the best blood, the best families, fortunes, abilities, and moral characters in the country?\textsuperscript{239}

CONCLUSION

The shifting fortunes of Crispus Attucks as cultural figure mirror the progressive racialization of his role in the Boston Massacre, and the shifting salience of race in public discourse. Identified with America's origins, the Massacre narratives are bound up with the idea of citizenship—who deserves to be counted as full members of the polity. John Adams's trial narrative, incorporated into the discourse of law, deployed race as a logic of exclusion, and, this article has argued, offered a narrow, race-based understanding of citizenship as a new national polity was coming into existence in Britain's American colonies. This exclusionary logic has continued to restrict the experience of citizenship among people of color—long after the formal definitions of citizenship have abandoned race, ethnicity, or color as touchstones. As Leti Volpp has noted in the context of post-September 11 responses to terrorism fears, individuals who "appear Middle Eastern, Arab, or Muslim," fall within a new identity category of "terrorist" which disqualifies them as citizen, even those who hold the formal status of U.S. citizenship. As targets of racial profiling, these individuals do not experience themselves as members of the national community. Rather, they are interpellated, in the Althusserian sense, as "objects of exclusion."\textsuperscript{240} The experience of Asian-American citizens has been similarly inflected by a sense of continuing alienation, a situation that literary scholar Lisa Lowe has described as "plac[ing] Asians 'within' the U.S nation-state, its workplaces, and its markets, yet linguistically, culturally, and racially [marking them] as 'foreign' and 'outside' the national polity."\textsuperscript{241} The mobilization of grass-roots support for laws\textsuperscript{242}

\textsuperscript{239} Letter of John Adams to James Burgh (December 28, 1774), in 9 JA WORKS, supra note 47, at 352.


\textsuperscript{241} Lisa Lowe, Immigrant Acts: On Asian American Cultural Politics 8 (Drake University Press 1996). The internment of Japanese-Americans during World War II on grounds of suspected disloyalty is the
that restrict the use of languages other than English in public spaces by groups that have been marked as nonwhite further demonstrates the ways in which American culture identifies and imagines itself\textsuperscript{243} with reference to an anglocentric norm. In calling attention to Adams's narrative/normative choices, this article has sought to illuminate originary assumptions, and the idea of citizenship inherent in narratives that claim to define a nation.

\textsuperscript{242} Raymond Tatelovich, Nativism Reborn? The Official English Language Movement and the American States 84-160, 168-172 (The University Press of Kentucky 1995). The proliferation of laws limiting bilingual education and declaring English to be the "official" language of the nation responds to patterns of new immigration—especially the increase in Spanish speakers, many of whom are marked as non-white. Voters in California, Arizona, and Massachusetts have approved measures to abolish bilingual education and replace it with English immersion classes. Recent Legislation, 116 Harv. L. Rev. 2709 (2003). Voters' support of immersion—a manifestation of the assimilation impulse—is closely related to the seemingly opposite reactions of the voters in Colorado, who rejected immersion out of fear that the mainstreaming of non-English speakers would adversely affect native English speakers in the classroom, this reaction reflects the contradictory impulses to assimilate and yet to keep separate "potentially unassimilable elements" tension that also surfaced in the discourse concerning late-19th-century immigration. Id. at 2715-16. This anxiety around the use of languages other than English in public space has also manifested itself in state and municipal legislation in the 1980s and 1990s, much of it based in popular initiatives and referenda, to declare English as the official language of government. The one "official English" case to reach the United States Supreme Court did not resolve the legal issues; the Supreme Court let stand an Arizona Supreme Court decision declaring unconstitutional Arizona's voter-initiated constitutional provision that barred government employees from speaking languages other than English when conducting official business. See Ruiz v. Hull, 191 Ariz. 441 (1998), cert. denied sub nom. Arizonans for Official English v. Arizona, 525 U.S.1093 (1999). Outside Arizona, the constitutionality of English-only laws remains an issue.

\textsuperscript{243} Lowe, supra note 241, at 29.