9

When Brands Go Bad

The Rise and Fall, and Re-Rise and Re-Fall, of Isaac Royall, Jr.

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I am the current holder of the Royall Chair at Harvard Law School (HLS). I inhabit a troubled brand. This chapter tells a story of a mark associated with it: a heraldic shield with three gold wheat sheaves on a field of blue (Figure 9.1). The vicissitudes of this mark, going on 300 years old, demonstrate how even a long-lived and much-valued brand can fall to the winds of reputational change; and how even a devastated brand can recover its lustre when those winds change course. Looking it all over, I am struck by the stubbornness of symbolic value as much as I am by its frailty in the face of political and moral contestation.

For me, the story starts with my becoming eligible for a Chair, through sheer seniority, in 2006. I had come over from Stanford Law School in 2000, and there was a lot about my new local academic culture that escaped me. There are no monetary or other upsides of a Chair designation to the faculty member, and the only expectation it entails is the delivery of an inaugural "Chair lecture." But still, getting so senior that you qualify for a Chair is not nothing. I noticed that a number of the Law School's oldest Chairs were empty, and I called up Dean Elena Kagan (who served in this capacity from 2003 to 2010) with a simple request: "Give me an old one." She took it under consideration, and that was the end of our conversation.

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FIGURE 9.1 Royall family shield with crest. W.H. Whitmore (ed.), *The Heraldic Journal Recording the Armorial Bearings and Genealogies of American Families*, vol. 1 (Boston: J.K. Wiggin, 1865), 12.

At the year-end faculty lunch where the new Chairs are announced, Dean Kagan announced that I was the new Royall Chair. A gasp went around the room. Why? I was completely in the dark.

Soon afterwards, I learned that I had a tiger by the tail. Daniel R. Coquillette, who was co-writing the unofficial history of the Law School together with Bruce A. Kimball,[1] graciously provided me with all his files on Isaac Royall, Jr., the donor of the Chair. His research assistant at the time, Elizabeth Kamali – now a tenured colleague on the faculty – helped me figure out the old documents.

What I learned from these files astonished me. This donor had come with his father and family to New England from Antigua in 1737, where they had owned multiple sugar plantations and held dozens of human beings in bondage. They traded in sugar and slaves as part of the Triangle Trade. In 1734 alone, Isaac Royall, Sr. sold 121 human beings.[2] After a drought and an earthquake, followed by a panic over a slave uprising and its severe repression, the family left Antigua for New England, settling in Medford, a town very close to Cambridge. They brought a large number of enslaved persons to their large Medford estate and proceeded to farm the land and live like the 1 percent of their era. Their large slaveholding was unusual in New England: essentially, they pared down the sugar plantation model of slaveholding and transposed it onto the more household-based New England slave/indentured-labor landscape.

When Isaac Royall, Sr. died in 1739, Isaac Royall, Jr. stepped into his father's life. Today we can tour the grand Georgian home he and his family inhabited on the banks of the Medford River; it is now run as the Royall House and Slave Quarters and curated to enable a deep comparison of the lifeways of the white Royalls and the people they held as slave labor (Figure 9.2). The site includes the large and well-preserved and probably only surviving slave quarters in New England. The Royall

[1] Daniel R. Coquillette and Bruce A. Kimball, *On the Battlefield of Merit: Harvard Law School, the First Century* (Cambridge, MA: Harvard University Press, 2015).

[2] Alexandra A. Chan, *Slavery in the Age of Reason: Archaeology at a New England Farm* (Knoxville: University of Tennessee Press, 2007), 50.

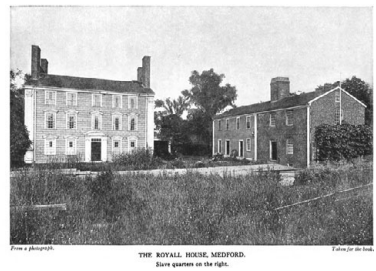

FIGURE 9.2 Royall House and Slave Quarters. Samuel Adams Drake, *Some Events of Boston and Its Neighbors* (Boston, 1917).

House and Slave Quarters Board commissioned Alexandra Chan to do an archaeological study of the latter, which yielded considerable information unattainable from the written record.[3]

Isaac Royall, Jr. fled to London at the outbreak of the Revolutionary War, and wrote his final will there.[4] It had two provisions that continue to provoke interest. In one, he made a grant to Harvard College to establish a "Professor of Laws . . . or . . . Professor of Physick & Anatomy" (what we would call medicine) (Item 12, Codicil Item 5). This is the Chair I now hold. And secondly, he provided for a single one of his enslaved human beings, Belinda, the option of freedom or becoming the personal property of his daughter, and stipulated (as the law of Massachusetts then required) that if she chose her freedom, she would not become a charge upon the town of Medford (Item 5). This implied that his estate would provide her with maintenance, if needed, to prevent her from becoming so needy that the town would be obliged under the Poor Law to support her, but the will made no explicit provision for her support.

Isaac Royall, Jr. had no income of which we are aware that was not directly or indirectly derived from slave labor. In light of this whole story, it's no exaggeration to say that the commencement of legal education at Harvard was enabled by the large-scale exploitation of black slaves. Symbolically, the link from that money to HLS was *my Chair*.

For my 2006 Chair lecture, I stood beneath the Robert Feke portrait of Isaac Royall, Jr., his wife, their daughter, his sister, and his wife's sister in the Treasure Room in Langdell Library (Figure 9.3)[5] – now named for a donor, the Caspersen Room – and told his story as best as I could figure it out. I published the lecture soon

[3] *Ibid*. For information not included in Chan's book, see Alexandra A. Chan, "The Slaves of Colonial New England: Discourses of Colonialism and Identity at the Isaac Royall House, Medford, Massachusetts, 1732–1775," Ph.D. dissertation, Boston University (2003).

[4] A copy of the will, dated May 26, 1778, is available at https://royallhouse.org/home/education/primary-resources/primary-sources/public-records. Thanks to Gracelaw Simmons for providing me her transcript.

[5] See Chan, *Slavery in the Age of Reason*, 115, for a reproduction.

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FIGURE 9.3 Robert Feke, "Isaac Royall and Family." Harvard Law School Library, Historical & Special Collections.

afterwards in the *Harvard BlackLetter Law Journal*.[6] What Coquillette and Kamali did was an amazing act of scholarly generosity: Coquillette let me scoop him on his own research, and Kamali helped him do it.

As Coquillette and Kimball explain in the first volume of their history of HLS, *On the Battlefield of Merit: Harvard Law School, the First Century*, the Royall Chair did not automatically lead to the establishment of the Law School. Rather, the original idea was that the Royall Professor would give a lecture series on law to students in the College. This embodied a new theory of legal education: not apprenticeship in a lawyer's office but the study of legal science equivalent to philosophy and theology as knowledge systems fit for instruction to undergraduates. But when they finally got underway in 1815, the endowment barely yielded enough to pay Isaac Parker, Chief Justice of the Massachusetts Supreme Judicial Court, for part-time work at Harvard. Throughout his service, his primary responsibilities were as a judge. A two-stage, lurching process led to the establishment of a viable Law School. Stage one, beginning in 1817, added a tuition-funded professor, Ashael Stearns, and inaugurated the Law School proper.[7] Yet stability and growth were out of reach for this tiny, overburdened faculty; it was not until 1829, when Nathan Dane and Joseph Story

[6] Janet Halley, "My Isaac Royall Legacy," *Harvard BlackLetter Law Journal* 24 (2008): 117–31.
[7] Coquillette and Kimball, *Battlefield of Merit*, 98–102, 109–15.

orchestrated the Dane Professorship with a significant endowment – and Story as its first occupant – that the Law School faculty could grow to three professors with a comprehensive curriculum and a stable business model.[8] Coquillette and Kimball exaggerate by quite a bit when they designate Isaac Royall, Jr. as the "founder" of Harvard Law School.[9] By their own account, that role went to Parker, Story, and Dane. But the Royall Chair was the spark that started Harvard out in its commitment to legal education. It remains the Law School's oldest Chair. That is my Chair. What does it mean? A lot of different things, it turns out.

ISAAC ROYALL, JR.

In his final will, Isaac Royall, Jr. directed that the vicinity of his house in Medford be called Royall Ville "always" and that anyone who inherited this entailed estate must take Royall as his last name (Items 21 and 22). He was a man obsessed with promoting and celebrating himself as a brand, specifically as the patriarchal, slave-holding, faux-aristocratic social capital of which he was the human embodiment.

His marks were many. The Feke portrait of him as paterfamilias, the John Singleton Copley portrait of his daughters festooned with luxury clothes and toys, the paired Copley portraits of Isaac, Jr. and his wife,[10] and the Royall House and Slave Quarters themselves: all survive to us as marks of his brand. But the most literal *sign* of his identity is the heraldic shield that he and his father adopted as their family crest.

A brief introduction to British heraldry is in order. In British usage, a shield or "coat of arms" is granted by the Crown – and by the Crown only – as a mark of honor and for the exclusive use of the grantee, who may be a knight or aristocrat, an individual who has accomplished something the Crown wishes to reward, a unit of government, or an institution. When granted to a human being, and as befits its character as a mark of royal or aristocratic status, it's heritable. It is explicitly honorific, and when used by non-royal individuals along the line of descent, it signifies aristocratic status, notable achievement, or royal favor belonging to the original grantee.

These marks frequently take the shape of a martial shield in reference to the idea that in the British tradition, which vastly predominated in colonial New England, the very first such arms were actual shields carried by aristocratic or knightly warriors into actual battle, and are called coats of arms because warriors would wear heraldic devices on coats worn over their armor. It's called heraldry because, in premodern usage, heralds combed the countryside for family births and deaths and granted shields. The entire system involves an elaborate history and detailed technical know-

[8] *Ibid.*, 113–15, 131–39.
[9] *Ibid.*, 75–76.
[10] See Chan, *Slavery in the Age of Reason*, 61, 116, for reproductions.

how. Each coat of arms is a state-sponsored, state-designed, state-bestowed mark, deliberately held scarce to the point of being unique, intended to enhance the status – the brand – of its bearer.

In the special language of heraldry, the verbal description of the Royall family shield (its "blazon") is "azure three garbs 2 and 1 or,"[11] that is, three wheat sheaves with one centered for a top row and two more below it in a second row, in gold on a background of azure. Surprisingly, we know a lot about how it was used by the Royall family. It appears on silver vessels given to churches attended by Isaac Royall, Jr. and his family, on a tomb erected in Dorchester to memorialize the grandfather and father, on bottles, bookplates, and wax seals[12] – and that's just what remains after more than 300 years! Isaac Royall, Jr. and his father clearly engaged in an extravaganza display of the shield.

Correspondence with a Windsor Herald in the British College of Arms confirms that the Royall arms "appear to be those of the medieval Earls of Chester."[13] In heraldic lingo, this means that the Royall family shield was assumed or assumptive, and not invented but pirated (more heraldry-speak) from arms authentically borne

[11] Charles Knowles Bolton, *Bolton's American Armory: A Record of Coats of Arms Which Have Been in Use within the Present Bounds of the United States* (Boston MA: F.W. Faxon, 1927), 142–43. See also the American Heraldry Society's webpage entry for this shield, www.americanheraldry.org/layouts/roll-early/royall-william-d.-north-yarmouth-me-1724.

[12] Bolton shows the Royall shield in two forms – with and without a crest bearing "a demi-lion rampant with a garb . . . in his paws and the motto 'Pectore Puro'" – and traces two examples of each. Bolton, *Bolton's American Armory*, 142–43. The shield alone appears on a two-handled cup made for First Church in Medford at the direction of Isaac Royall, Jr.'s will, thus in or soon after 1781. E. Alfred Jones, *Old Silver of American Churches* (Letchworth: Arden Press, 1913), 275. It also appears on the tomb dedicated to William Royall of North Yarmouth, Maine (d. 1724) and his son "Hon. Isaac Royall of Antigua and N.E." (d. 1739), in the Burying Ground, Dudley Street, Dorchester: see W.H. Whitmore (ed.), *The Heraldic Journal Recording the Armorial Bearings and Genealogies of American Families*, vol. I (Boston, MA: J.K. Wiggin, 1865), 12–14. The tomb includes an elaborate encomium to Isaac Royall, Sr., which has been transcribed by Chan, *Slavery in the Age of Reason*, 98. The shield with crest, inscribed to "Isaac Royall, Esq., of Antigua," appears in several books in the collections of the Royall House and Slave Quarters and the American Antiquarian Society: Royall House and Slave Quarters, bookplate, https://royallhouse.org/the-royall-bequest-and-harvard-law-school; American Antiquarian Society, Bookplate Collection Name List, www.americanantiquarian.org/bookplate-name-list (two entries). The crested shield also adorns a baptismal font that Isaac Royall, Jr. gave to St. Michael's Church, Bristol, Rhode Island in 1747 (Jones, *Old Silver*, 97). Mason Hammond indicates that Isaac Royall, Jr.'s wife came from Bristol, in "A Harvard Armory: Part I," *Harvard Library Bulletin* 29.3 (1981): 261–97 (hereinafter Hammond, Part I), at 285 n.43. Chan unearthed several bottles embellished with the crested shield at the site of the Royall House and Slave Quarters. Chan, "Slaves of Colonial New England," 259, figs. 6.8 and 6.9. Finally, the Harvard Law Library also possesses a seal with two wax impressions showing the shield with crest. The latter would have been used to authenticate signatures on documents. *Historical Treasures: A Look at HLS's Special Collections*, September 4, 2015, https://today.law.harvard.edu/historical-treasures-a-look-at-hlss-special-collections (slide show including brass seal and wax impressions).

[13] John Petrie, Windsor Herald, email correspondence with author on March 5, 2020 (on file with the author).

by an ancient aristocratic family.[14] That is to say, the Royall shield is not only fake but also stolen.

There is certainly nothing aristocratic about the Royall family. The grandfather, William Ryall, and another man emigrated to New England in 1629 as indentured servants to work as "coopers and cleavors of tymber."[15] He first settled in Salem, and gave his name to a section of the newly settled town: "Ryal Side."[16] Once free, he moved to Maine,[17] where according to some sources he gave his name to a river along which he owned land.[18] He died in North Yarmouth, Maine.[19] The name is recorded as Ryall, Ryal, and Rial before it was converted to the more pretentious Royal and Royall.[20] At the apex of the family's prosperity, they were agricultural

[14] Heraldic handbooks agree with this conclusion. Bolton and the first volume of *The Heraldic Journal*, a Boston-based mid-nineteenth-century effort to sort out genuine from spurious arms in the colonial period, include the grandfather in their accounts of the shield, but abstain from tracing the coat of arms to any official source. Bolton, *Bolton's American Armory*, 142–43; Whitmore (ed.), *Heraldic Journal*, 21–22, 31–33. See also Hammond, Part I, 284, 286 n.43. Collections of arms that strive to include only authentic grants consistently omit the Royall arms. William H. Whitmore, *Elements of Heraldry: Containing An Explanation of the Principles of the Science and a Glossary of the Technical Terms Employed, with an Essay upon the Use of Coat-Armor in the United States* (New York: W.J. Widdleton; Boston, MA: Lee and Shepherd, 1866), 63–70 (focusing on American arms); William S. Appleton, *The Gore Roll of Arms and Positive Pedigrees and Authorized Arms* (Baltimore, MD: Heraldic Book Company, 1964) (reprinting sources from an early seventeenth-century Boston coachmaker and *The New England Historical and Genealogical Register* 1891 and 1898); *Fairbairn's Book of Crests of the Families of Great Britain and Ireland*, vol. I, rev. edn (London: T.C. and E.C. Jack, 1905); *Matthews' American Armoury and Blue Book* (New York: Gorham, 1907); E. de V. Vermont, *America Heraldica: A Compilation of Coats of Arms, Crests, and Mottoes of Prominent American Families Settled in this Country Before 1800* (New York: Heraldic Publishing., 1965) (omitting the Royall name from all lists of authenticated arms but including "Jacob Royal," Isaac Royall, Jr.'s uncle, on a list of subscribers to a 1736 Boston publication designated "esquire," who the compiler surmised bore coats of arms, 14–15; and including "Isaac Royall" on a list of colonists associated with "Early American Heraldic Bookplates," 16–17); Thomas Woodcock and John Martin Robinson, *The Oxford Guide to Heraldry* (New York: Oxford University Press, 1988), Chapter IX, "American Heraldry," 156–71 (College of Arms grants to American colonies, individuals, cities, and a tribe). Meanwhile, the Royall shield is included in three compilations that make no systematic effort to determine authenticity: Bolton, *Bolton's American Armory*, ix ("Readers whose chief interest is in 'authentic' arms or the right to bear arms must look elsewhere."); Eugene Zieber, *Heraldry in America* (Philadelphia: Department of Heraldry of the Baily, Banks & Biddle Co., 1895), 51; William Armstrong Crozier (ed.), *Crozier's General Armory: A Registry of American Families Entitled to Coat Armor* (New York: Fox, Duffield & Co., 1904), 113.

[15] Calvin P. Pierce, *Ryal Side from Early Days of Salem Colony* (Cambridge, MA: Riverside Press, 1931), 1–2; see also James Henry Stark, *The Loyalists of Massachusetts and the Other Side of the American Revolution* (Boston, MA: W.B. Clarke, 1907; photo repr. Miami, FL: HardPress Publishing, n.d.), 290 (also available from Project Gutenberg at www.gutenberg.org/files/39316/39316-h/39316-h.htm).

[16] Pierce, *Ryal Side*, 1–2; see also W.E. Butler, "The Royall Bookplate, Slavery, and Harvard Law School," *Bookplate Journal* 14.2 (2016),132–33, 127–28).

[17] Pierce, *Ryal Side*, 1–2.

[18] Whitmore (ed.), *Heraldic Journal*, 13.

[19] Bolton, *Bolton's American Armory*, 142–43.

[20] Butler, "Royall Bookplate," 127; Pierce, *Ryal Side*, 1–2.

magnates and traders, including active participation in the slave trade. At the Royall House and Slave Quarters in Medford you can still see the wooden statue that Isaac Royall, Jr. placed in the center of his formal garden. It is of Mercury, the god of trade, an emblem I take as a warrant to claim that Isaac Royall, Jr. was himself not the least bit ashamed of his commercial success, and that he, at least, felt he had no nobility to lose.

Charles Knowles Bolton, one of the primary sources on American heraldic practices, traces the Royall shield back to the grandfather.[21] This is unlikely. The above-mentioned bookplate is surely attributable to Isaac Royall, Sr. and corresponds with a large library, twelve times larger than that of any other Boston household inventoried in the decade of his death.[22] The church silver dates to Isaac Royall, Jr.'s time, and Chan excavated the bottles decorated with the device from the Medford home, first owned by Isaac Royall, Sr. This is not an ancestral mark: father and son used it to dignify new money.

What would it have meant to the contemporaries of the Royall father and son that they lavishly displayed the shield? There was never a College of Arms in any of the North American British colonies. The Constitution includes clauses barring ranks of nobility,[23] and the founders rejected the idea of establishing a national College of Arms.[24] Heraldry bore a strong anti-republican stigma. But it was permitted, tolerated, and in widespread use. Very seldom did colonial arms-bearers show authentic arms. Far more often they assumed arms to which they had no home-country right.

Indeed, what made heraldry controversial in the revolutionary period and early republic was any claim that it should be *made* authentic by the establishment of an American College of Arms. The following story is indicative. On July 4, 1776, the same day that the Declaration of Independence was issued, the new nation's leadership authorized the creation of a national seal.[25] A state seal would symbolize the country's full independence and its equality with other seal-bearing states of the world. As a mark, a state seal is far from the heraldic shield of an aristocratic or merely rich family. The state seal is given to the control of an authorized officer, who must apply it to certain official documents for them to be valid; it played an important role in international diplomacy, particularly in the recognition of states by other states as formal co-equals. The US could adopt a state seal without implying anything about establishing a College of Arms issuing family shields in America.

[21] Bolton, *Bolton's American Armory*, 142–43.
[22] Butler, "Royall Bookplate," 132–33.
[23] U.S. Constitution Art. 1 Sec. 9 (federal government); Art 1 Sec. 10 (state governments).
[24] Dom William Wilfrid Bayne, "Heraldry in Democratic America," Part II, *Coat of Arms* 56 (1963): 325–33 (at 327); see also Bayne, "Heraldry in Democratic America," Part I, *Coat of Arms* 55 (1963): 283–91.
[25] Stephen Slater, *The Complete Book of Heraldry: An International History of Heraldry and Its Contemporary Uses* (New York: Lorenz, 2002), 223.

But in 1788, William Barton, who had already contributed the eagle to the design of the Great Seal of the United States (which was not finally promulgated until 1782),[26] wrote to George Washington urging the establishment of state-authenticated heraldry:

> I have endeavoured, in my little tract, to obviate the prejudice which might arise in some minds, against Heraldry, as it may be supposed to favor the introduction of an improper distinction of ranks. The plan has, I am sure, no such tendency; but it is founded on principles consonant to the purest spirit of Republicanism and our newly proposed Fœderal Constitution. I am conscious of no intention to facilitate the setting up of any thing like an order of Nobility, in this my native Land[.][27]

Washington himself made prolific use of ancestral arms, probably brought to America by his great-grandfather, and cared enough about their authenticity to obtain ratification from the College of Arms in 1791.[28] But setting up a College of Arms in the United States was a bridge too far. He gently rejected Barton's argument that heraldry could harmonize with life in a republic of juridical equals. Washington's diplomatically stated response declares that he was chary of introducing official heraldry not because he deprecated it, but solely because the political moment was too inflamed to risk even an innocent move that could enable the opponents to denounce "the proposed general government ... [as] pregnant with the seeds of distinction, discrimination, oligarchy and despotism[.]"[29]

Thus authentic arms were extremely rare and highly prized, but derived from a remote and contested sovereign; assumed coats of arms were ubiquitous and unregulated; and heraldry signified social rank, even aristocratic family origins, in a society committed both to social hierarchy and to legal equality for white men. In these circumstances, what would people make of a shield like the Royalls'? Much later, heraldry and genealogy aficionados earnestly heaped contempt on assumed arms.[30] But these strenuous efforts all have an antiquarian feel to them: it would be a

[26] Letter, William Barton to George Washington, August 28, 1788, *The Papers of George Washington Digital Edition* (Charlottesville: University of Virginia Press, Rotunda, 2008), https://rotunda-upress-virginia-edu.ezp-prod1.hul.harvard.edu/founders/GEWN-04-06-02-0463.

[27] *Ibid*.

[28] *Washington's Mount Vernon: Coat of Arms*, www.mountvernon.org/library/digitalhistory/digital-encyclopedia/article/coat-of-arms.

[29] Letter, George Washington to William Barton, September 7, 1788, *Papers of George Washington*, https://rotunda-upress-virginia-edu.ezp-prod1.hul.harvard.edu/founders/GEWN-04-06-02-0446.

[30] Condemnations of the proliferation of assumed arms in the US abound, but none of them seems to reflect colonial and immediate-post-revolutionary sentiment. Bayne concludes, from a discussion of the frequent pirating of arms in the colonial period, that "The motives behind this activity are understandable, and ignorance explains, if it does not excuse, the abuse, but the result is deplorable." Bayne, "Heraldry in Democratic America," Part II, 331. Johnson warns that "To usurp the use of another person's coat of arms is highly improper and is a dishonest practice." David Pittman Johnson, *The Heraldic Register of America*, vol. 1 (University, AL: American College of Heraldry, 1981), ix. More recently, in a beautiful handbook on heraldry,

mistake to read them back onto the colonial cultural milieu. At the time the Royall family was brandishing its shield, the distant past that these later strivers were trying to preserve was the common present. Rules and rolls separating authentic wheat from assumed chaff would have been unnecessary where the very few who had authentic arms would have been known to do so. Isaac Royall, Jr.'s use of his faux-ancestral shield could have indicated some fondness for the aristocratic hierarchy of the homeland or sympathy with colonial officialdom; but its ersatz origins could equally have signaled disrespect for colonial pretensions to aristocratic status. With his flight at the outbreak of the Revolution, it might have been used as part of the case against his loyalty to the new government – but it would not do to take that line of thought too far. According to the American Heraldry Society, thirty-five signatories of the Declaration of Independence, including John Hancock and Benjamin Franklin, were armigerous;[31] even John Quincy Adams bore assumed arms.[32]

Fittingly, perhaps, the very issue of revolutionary fervor for a government dedicated to freedom and equality – to life, liberty, and the pursuit of happiness and to the proposition that all men are created equal – had a direct, personal impact on Isaac Royall, Jr., in the form of a precipitous fall from political grace. The revolutionaries' rapid victory in the Battles of Concord and Lexington on April 19, 1775, switched out the governing powers in eastern Massachusetts overnight. Isaac Royall, Jr. had gone to Boston three days earlier, separating himself from the patriot-controlled countryside and lodging in an urban, armed camp controlled, at King George's command, by General Gage.[33] Did his travelling to Boston at that

Steven Slater derided inauthentic arms as "'bucket-shop' heraldry" and "bogus." Slater, *Complete Book of Heraldry*, 243. For more, see Whitmore, *Elements of Heraldry*, iii–iv, 77, fulminating against the practice of assuming arms based on a shared last name rather than precise genealogical descent, and hoping to promote "a decrease of the ridiculous assumptions which have thrown an undeserved stigma upon American heraldry"; Zieber, *Heraldry in America*, 75–76; and Vermont, *America Heraldica*, v–xii, bewailing assumed arms as forcible theft deserving "perfect and justified contempt." The literature is also replete with proposed schemes to regularize heraldry in the US. See Slater, *Complete Book of Heraldry*, 223, relating the successive establishment of the American College of Heraldry in 1972 and of the College of Arms Foundation in the 1980s; Johnson, *Heraldic Register of America*, x, lamenting US federal and state governmental failure to establish a registry of authentic arms and relating the establishment of the American College of Heraldry; L.G. Pine, *The Story of Heraldry* (London: Country Life, 1952), 125–27, approving the New England Historic Genealogical Society of Boston's establishment of a registry and Rolls of Arms for American grantees. Several have proposed specific rules to govern the use of heraldic signs in the US precisely to enable dissemblers to be exposed as such. See Zieber, *Heraldry in America*, 77–81; Crozier, *Crozier's General Armory*, [preface], "Coat Armor in America," v–viii; Vermont, *America Heraldica*, x–xii.

[31] American Heraldry Society webpage, Arms of Famous Americans, Founding Fathers, Signers of the Declaration of Independence, www.americanheraldry.org/heraldry-in-the-usa/arms-of-famous-americans/founding-fathers/category/declaration-of-independence.

[32] Bayne, "Heraldry in Democratic America," Part II, 331.

[33] Mark Peterson, *The City-State of Boston: The Rise and Fall of an Atlantic Power* (Princeton University Press, 2019), 291, 299, 343.

moment suggest loyalty to the Crown (the thinking would run: "Royall was with the Royalists so he must be one") or was he on an anxious mission to repair bridges to the British after his bold refusal of the oath to become a Mandamus Councilor as part of George III's plan for repression of the colonists?[34] Close reading of his political engagements before this crisis suggests that he preferred a mediating role between the increasingly alienated extremes;[35] on April 19, 1775, the space for such political ambivalence shrank to the vanishing point. Even if his trip to Boston were entirely innocent of political intentions, it could not now be unmarked by political *signification*. But the polarization of the semiotic field and the emptiness of his sign produce an ambiguity that will probably never be resolved.

Nor did his subsequent actions bestow a clear meaning on his travel to, and his subsequent flight from, Boston. Within days of the opening of the Revolutionary War, he fled in the general evacuation of loyalist civilians from Boston, landing in Halifax. About a year later, he proceeded to London.[36] When seeking to ingratiate himself with the British aristocracy and to obtain a share of the monetary support being doled out to loyalists forced into exile by the Revolution, he represented himself as "one of the unfortunate persons who from the dreadful tempest of the times in the Massachusetts Bay was obliged to leave that country and finally take refuge in this[.]"[37] But when seeking to ingratiate himself with Massachusetts elites he explained his trip from Medford to Boston as the first stage of a voyage to Antigua to settle some financial matters, his trip to Halifax as an effort to gain a safe harbor whence to complete his trip to Antigua, and his decision to shift to London instead as a concession to his desperate family, who had already settled there. How else could he see his grandchildren, he pathetically asked.[38] In the former letter, he denounced the "Colonists" as "deluded" and unable to see that their "true interest" lay in "their duty to their Mother Country and to the best of Kings"; in the second letter he professed loyalty to the new Commonwealth. If in controversies over his character centuries later Isaac Royall, Jr. has been subject to radically divergent interpretation – the dizzying oscillation that this chapter traces – it is perhaps safe to say that it began in his own acts of self-branding.

This calamitous bouleversement was family-wide. Isaac Royall, Jr. and his sons-in-law Sir William Pepperell and George Erving were named in the Banishment Act of 1778; the latter two were also named in the Conspirator's Act of 1779 and thereby lost all their Massachusetts holdings; the Massachusetts property of Isaac Royall, Jr. was

[34] Stark, *Loyalists of Massachusetts*, 136 ("Mandamus Counsellors").
[35] Colin Nicholson and Stuart Scott, "A 'Great National Calamity': Sir William Pepperell and Isaac Royall, Reluctant Loyalists," *Historical Journal of Massachusetts* 28 (2000): 117–41.
[36] Chan, "Slaves of Colonial New England," 81.
[37] Letter from Isaac Royall, Jr., to Lord North, May 31, 1777, https://royallhouse.org/home/education/primary-resources/primary-sources/correspondence.
[38] Letter from Isaac Royall, Jr., to Reverend Samuel Cook, March 29, 1779, https://royallhouse.org/home/education/primary-resources/primary-sources/correspondence.

seized under the Absentee Act of 1779 and was returned to his estate only near the end of the century.[39] These seizures included personal as well as real property. And having left Massachusetts after April 19, 1775 and "join[ed] the enemy," they were all subject to the Test Act of 1778, proscribing their return.[40] The only reason that their exile was not spent in complete destitution was the continued enjoyment of their West Indian holdings and any assets they had managed to extract from North America prior to restrictions being imposed by the loyalty acts.[41]

From its very first day, the Revolutionary War and its eventual turning-upside-down of political control crashed the Royall brand. Two subsequent stories, one involving his bequest to Belinda, the other involving his bequest to Harvard College, show how temporary this nadir was.

BELINDA SUTTON

After Isaac Royall, Jr. died in 1781, Belinda took her freedom and triggered his estate's legal duty to support her if she were in need.[42] Starting only two years later, she filed six petitions – in 1783, 1785, 1787, 1788, 1790, and 1793[43] – with the

[39] "State of Massachusetts-Bay. In the year of our Lord one thousand seven hundred and seventy eight. An act to prevent the return to this State of certain persons therein named, and others, who have left this State or either of the United States, and Boston," *Massachusetts. Laws, Statutes, Etc*, https://hdl.loc.gov/loc.rbc/rbpe.04002100; "An Act to Confiscate the Estates of Certain Notorious Conspirators against the Government and Liberties of the Inhabitants of the Late Province, Now State, of Massachusetts Bay," Province Laws – 1778–79, Chapter 48 (April 30, 1779); "An Act for Confiscating the Estates of Certain Persons Commonly Called Absentees," Province Laws – 1778–79 (May 1, 1779). The Absentee Act provided defenses and a right to appeal in lieu of the summary processes of the Banishment Act and the Confiscation Act. Stark provides transcriptions in *Loyalists of Massachusetts*, 137–44.

[40] "An Act for Prescribing and Establishing an Oath of Fidelity and Allegiance," Province Laws – 1777–78, Chapter 18, Sect. 4 (February 3, 1778).

[41] Stark, *Loyalists of Massachusetts*, 290 ("The Vassalls").

[42] An Act Relating to Molato and Negro Slaves, ch. 1, Act of July 28, 1703. Technically, this Act conditioned the enslaved person's freedom on the manumitting master's providing to his or her town "sufficient security" to keep the emancipated person off the poor rolls. Apparently no one attempted to prevent Belinda from claiming her freedom. By 1783, the year of her first petition, Chief Justice William Cushing gave his jury instructions in the *Quock Walker* case declaring slavery inconsistent with the Massachusetts constitution. A. Leon Higginbotham, Jr., *In the Matter of Color: Race and the American Legal Process: The Colonial Period* (Oxford University Press, 1978), 94–95 (quoting the jury instructions). Nevertheless, the manumission statute was not repealed until 1807. See Kunal M. Parker, "Making Blacks Foreigners: The Legal Construction of Former Slaves in Post-Revolutionary Massachusetts," *Utah L. Rev.* (2001): 75–124 (at 97 n.46).

[43] I am reproducing simplified citations for these petitions; complete citations can be found at the links. Petition of Belinda Royal, Repository Collection Development Department, Widener Library, HCL, Harvard University, http://nrs.harvard.edu/urn-3:FHCL:13906083?n=1 (hereinafter 1783 petition or first petition); Petition of Belinda Royall, Collection Development Department, Widener Library, HCL, Harvard University, http://nrs.harvard.edu/urn-3:FHCL:10935254?n=1(hereinafter 1785 petition or second petition); Petition of Belinda, Collection Development Department, Widener Library, HCL, Harvard University, http://nrs

Massachusetts Legislature, sitting as the General Court, seeking that support. Belinda signed all these petitions with "her mark," an X, a reliable indicator that she was illiterate and could not have written them herself. In response to the first petition, the General Court ordered that fifteen pounds, twelve shillings be paid to her annually from the Commonwealth Treasury.[44] The fair copy of this "resolve" was signed by John Hancock and Sam Adams.[45] The next two petitions complained that payments had stopped after one annual cycle; Belinda's petition of 1793 indicates that only one further payment had been made, in 1787; and in 1790 she sought payment from the estate of a promised ten shillings per week for life. In 1788 and 1793 she signed as Belinda Sutton; apparently she had married. The latter petition was witnessed by Priscilla Sutton: was this the infirm daughter Belinda mentioned in her first petition? In 1793, Belinda alleged that she had sought recourse to Isaac Royall's son-in-law, Sir William Pepperell, and that he "made her some allowances, but now refuses to allow her any more[,]" causing her to seek once again the original "bounty."

As the years go by, the petitions become increasingly desperate, speaking of her old age, inability to work, and poverty. And indeed, she would have been very old: she indicated in the first petition that she was seventy years old, so by the time of the last one she would have been about eighty-three. There is a crescendo of misery: Belinda spoke of "her distress and poverty" (1785); averred herself "thro' age & infirmity unable to support herself" (1787); and complained that she was "perishing for the necessaries of life" (1790).

The nearly perfect failure of the Treasury to follow the 1783 order, despite dramatic signatory support from Hancock and Adams and continually renewed petitions from Belinda, has the earmarks of back-channel controversy: someone or some ones inside government was or were putting themselves in the way. Who was responsible for Belinda's suffering?

The first petition blames Isaac Royall, Jr., the exploitation of slavery, and the hypocrisy of the revolutionary elite. It is an indictment of the man precisely *for* his role in enslaving human beings. The petition links his tyranny over Belinda to his affinity for British tyranny: Belinda denounces them both and shames the

.harvard.edu/urn-3:FHCL:12208672?n=1 (hereinafter 1787 petition or third petition); Petition of Belinda Sutton, Collection Development Department, Widener Library, HCL, Harvard University, http://nrs.harvard.edu/urn-3:FHCL:12208701?n=1 (hereinafter 1788 petition or fourth petition); Petition of Belinda, Repository Collection Development Department, Widener Library, HCL, Harvard University, https://iiif.lib.harvard.edu/manifests/view/drs:46621048$2i (1790 petition or fifth petition); Petition of Belinda Sutton, Collection Development Department, Widener Library, HCL, Harvard University, http://nrs.harvard.edu/urn-3:FHCL:11148838?n=1 (hereinafter 1795 petition or sixth petition) (this petition includes some inscriptions made in 1795, giving rise to inconsistencies in its date; the text declares that it was *filed* in 1793).

[44] The original 1783 order is included in the folder with Belinda's first petition.

[45] The fair copy of the 1783 order is included in the folder with Belinda's 1790 petition.

Legislature for seeking freedom for white colonists but not black slaves.[46] This was the first time – and, as far as I know the last time, until the Royall House and Slave Quarters leadership and then Coquillette took up the issue – that Isaac Royall, Jr. was in any way held to account *as a slaveholder*. This singeing document appealed to the wartime[47] legislature of Massachusetts – a body of men who had staked all on independence from Britain – by praising them for their commitment to freedom and equality for all, and then shaming them for not extending succor to a victim of slavery and oppression much worse than anything they had suffered at the hands of Britain. It pointed the finger of hypocrisy directly at them, and gave them a handy exit from moral opprobrium: relieve Belinda's need.

The petition begins with an idyllic account of Belinda's birth and childhood on the African Gold Coast. It then tells of her seizure by white slave traders, of the misery she endured on what we call the Middle Passage, and of her shock when she arrived in America to find herself in a Babel of strange tongues and in slavery till death. Then she made her appeal for justice, which is worth quoting in full:

> Fifty years her faithful hands have been compelled to ignoble servitude for the benefit of an ISAAC ROYALL, untill, as if Nations must be agitated, and the world convulsed for the preservation of that freedom which the Almighty Father intended for all the human Race, the present war was Commenced – The terror of men armed in the Cause of freedom, compelled her master to fly – and to breathe away his Life in a Land, where, Lawless domination sits enthroned – pouring bloody outrage and cruelty on all who dare to be free.
>
> The face of your Petitioner, is now marked with the furrows of time, and her frame feebly bending under the oppression of years, while she, by the Laws of the Land, is denied the enjoyment of one morsel of that immense wealth, apart whereof hath been accumilated [*sic*] by her own industry, and the whole augmented by her servitude.

[46] The rhetoric of Belinda's first petition resembles that of freedom petitions, which were frequently lodged with the General Court, and of contemporary demands for reparations for the intergenerational harm wrought by the Atlantic slave system. See Roy E. Finkenbine, "Belinda's Petition: Reparations for Slavery in Revolutionary Massachusetts," *William and Mary Quarterly* 64 (2007): 95–104. But Belinda already had her freedom: she was seeking private support that was mandated by the Poor Law system to keep reliance on town support to a minimum. The idea that the first petition is a model for modern reparations claims finds support in its strong moral objection to the enrichment of Isaac Royall, Jr., through Belinda's labor, and the unfairness of barring her from sharing in the resulting wealth. But the analogy has two impediments, only one germane to the first petition itself. First, the remedy sought was based in the Manumission Act and the Poor Law system, not unjust enrichment. And second, once the campaign for her support was taken over by Royall's own executor, Willis Hall, this theme drops out entirely, but the prayer for support was carried on for years nevertheless. The *OED* definition of reparation contemporary with the first petition requires wrongdoing by the obligor, something Willis Hall would not have conceded. *Oxford English Dictionary Online*, "Reparation," 3.a.

[47] The petition is dated February 14, 1783; the Treaty of Paris was signed September 3 of the same year.

> WHEREFORE, casting herself at the feet of your honours, as to a body of men, formed for the extirpation of vassalage, for the reward of Virtue, and the just return of honest industry – she prays, that such allowance may be made her out of the estate of Colonel Royall, as will prevent her and her more infirm daughter from misery in the greatest extreme, and scatter comfort over the short and downward path of their Lives – and she will ever Pray.
>
> Boston 14th February 1783 the mark of Belinda

Note that when the petition names Isaac Royall in its first sentence, it shifts to a strikingly larger script, exaggerating the pun involved in his last name: even Isaac Royall's name condemns him.

Roy E. Finkenbine tells the story of this petition's publication by revolutionary-era critics of slavery.[48] Whoever wrote it – probably Prince Hall, a member of the politically and culturally active free black community of Boston[49] – intended, and got, an audience wider than the Massachusetts Legislature. Belinda's first petition thus marks a second nadir for the Isaac Royall brand.

After wrangling with the records, I can explain how but not why Belinda was subjected to such prolonged deprivation of the support due to her. If Royall had not fled Medford, if his estate, once in probate, had remained under his executor's control, and if Belinda, once freed, became (as she did) unable to support herself, the Poor Law overseer of Belinda's town could have brought suit against the estate for emancipating Belinda without providing security. But Royall's estate was under the control of the state, though it never escheated. Ironically, it was Royall's fall from grace *as an absentee* that made it possible for as-yet unidentified forces in the colonial and then new Commonwealth government to choke off her support. Only when Isaac Royall was relieved of that opprobrium were funds returned to the control of his executor.

The story of this gradual re-rise of Isaac Royall is a law story.[50] On May 25, 1778, the Town of Medford placed Royall's estate in probate, with Simon Tufts as agent.[51] The Selectmen based this move on the fact that "the said Isaac Royall voluntarily went to our enemies and is still absent from his habitation and without the State."[52]

[48] Finkenbine, "Belinda's Petition."

[49] Chan, *Slavery in the Age of Reason*, 1.

[50] Margot Minardi, "Why Was Belinda's Petition Approved?," https://royallhouse.org/why-was-belindas-petition-approved.

[51] Arthur E. Sutherland, *The Law at Harvard: A History of Ideas and Men, 1817–1967* (Cambridge, MA: Harvard University Press, 1967), 39. Simon Tufts, Jr., a medical doctor, hailed from a prominent Medford family and is an ancestor of Charles Tufts, who established Tufts University in 1852. Charles M. Green, *The Early Physicians of Medford* (Boston, MA: Rockwell and Churchill Press, 1898), 9–11; Mindy Kent, "Genealogy of the Tufts Family" (on file with the author).

[52] *Middlesex County, MA: Probate File Papers, 16481871*, Middlesex Cases 18000–19999, p. 19546:2, New England Historic Genealogical Society, www.americanancestors.org/DB536/i/14466/19546-c02/383820 86); see also David Edward Maas, "The Return of the Massachusetts Loyalists," Ph.D. dissertation, University of Wisconsin–Madison (1972), 315 n.212. Maas

Two years later, the Massachusetts Legislature adopted the Absentee Act. A letter from Tufts dated May 26, 1780 indicates that he and Willis Hall (to be distinguished from Prince Hall, the probable drafter of the first petition), already named executor under Royall's will, petitioned together for release of the estate, but that "the Court … have … *Hung it up*"[53] – that is, opted for inaction with the result that the estate remained in state hands.

Royall died in 1781. Belinda's first petition resulted in the 1783 General Court order on her behalf, which directed: "That their [*sic*] be paid out of the Treasury of this Commonwealth out of the rents and profits arising from the estate of the late Isaac Royall esq an absentee fifteen pounds twelve shillings p[er] annum[.]" The Absentee Act had moved the funds into the Commonwealth Treasury. The verso of the original order includes calculations of the recent income to the Treasury from Royall's property. There were sufficient funds to pay Belinda her due.

Isaac Royall, Jr.'s will was entered in probate in 1786, empowering Willis Hall to serve as his executor.[54] On February 28, 1787, Hall registered a list of Royall's legacies and debts in the Suffolk County Probate Court. The debts included "for support of Belinda his aged Negro servant per annum for 3 years £30."[55] This roughly corresponds with the Treasury's then-unpaid support allowances for 1784, 1785, and 1786 (shaving off twelve shillings). Hall apparently had control of some assets, but in the 1790 petition Belinda (that is, probably, Willis Hall) indicated that "the Executor of [Isaac Royall's] … will doubts whether he can pay the said sum without afurther [*sic*] interposition of the General Court[.]" So Hall took Belinda's cause to the General Court: he witnessed and probably wrote the 1787 and 1793 petitions, and likely had at least a guiding hand in those of 1788 and 1789.

It is very possible that Willis Hall believed that, in petitioning for Belinda's relief, he was pursuing his principal's intentions. From a contemporary perspective, this is not entirely exonerating. Isaac Royall's will bequeathed four enslaved human beings – "my Negro Boy Joseph & my Negro Girl Priscilla" to "my beloved Son in Law Sir William Pepperell Baronet" (Item 4) and "my Negro Girl Barsheba & her sister Nanny" to his daughter, Mary Erving (Items 5) – and Hall may have executed those instructions. Nor is it clear why both Royall and Hall were so committed to relatively favorable treatment of Belinda Sutton. But I think it is evident that, even after the abandonment of the fiercely political strategy embodied by the first petition, Mrs. Sutton was not without friends.

published his dissertation as a book – *The Return of the Massachusetts Loyalists* (New York: Garland, 1989) – but I have been unable to obtain a copy.

[53] Letter from Simon Tufts to Edmund Quincy, May 26, 1780, https://royallhouse.org/home/education/primary-resources/primary-sources/correspondence. Isaac Royall, Jr. tells the saga of his confiscation and banishment in his letter to Reverend Samuel Cook, March 29, 1780. See also Sutherland, *Law at Harvard*, 40, for a discussion of Tufts' letter.

[54] Sutherland, *Law at Harvard*, 40.

[55] Suffolk Co. Massachusetts Probate File Papers, No. 18863_1786 (February 28, 1787).

The stakes for Belinda of Isaac Royall, Jr.'s flight to London were therefore very high. Willis Hall was clearly dedicated to her support. If Royall had not fled, and had been able to appoint Hall his executor, Hall would have had not only the inclination but also the power to pay for her support. But because of Royall's flight, his estate was locked up in the Commonwealth Treasury for most of her time as a free woman.

Two years after Isaac Royall, Jr. died in London, Britain and the United States concluded a peace. After independence, anti-loyalist confiscations continually lost ground, a process that indirectly improved Royall's reputation. The Treaty of Paris (1783) nominally committed Congress to urge the states to restore property they had confiscated under their loyalty statutes.[56] David Edward Maas shows in detail the ever-so-gradual success of Massachusetts absentees in regaining legal capacity between 1784 and 1790: permissions to possess and inherit, to collect debts, and to return were gradually granted to the lucky few, with an equally gradual diminuendo of anti-loyalist vitriol and controversy.[57] Harvard started receiving land granted to it by Royall in 1795/96.[58] And in 1805, the General Court issued a resolve allowing Royall's loyalist heirs to convey property that they inherited under his will.[59]

Belinda's 1788 and 1790 petitions designated the man she had denounced in her first petition as "the honorable Isaac Royall." Her petitions were now in the hands of Willis Hall, not Prince Hall: she may have still felt intense scorn for her former owner, but expressing it was no longer an option. Between 1793, the year of Belinda's last petition, and a 1799 petition filed by successors to Hall acting as executors of the Royall estate – thus roughly in the same period during which Harvard started taking possession of its Royall land bequests and well before his loyalist heirs were allowed to step into their inheritance – a settlement was reached securing support for Belinda and Priscilla Sutton.[60] The atmospherics as well as the institutional situation had changed dramatically. Royall's new executors felt safe in offering an exonerating description of his 1775 flight from Boston. They depicted him not as a refugee or absentee, but as a loyal albeit hapless invalid, and made note that the estate had been returned to his executors. Isaac Royall had, it seems, gotten a posthumous moral get-out-of-jail-free card:

> Humbly sheweth that the said Isaac Royall being in an infirm state of health was induced to leave this commonwealth in the year 1775 by the Earnest entreaties & solicitations of his friends & that he was for some time considered as an absentee & his Estate taken possession of by the Government, but upon consideration of the

[56] "The Definitive Treaty between Great Britain and the Thirteen United States of America" (The Treaty of Paris), Art. V, in *The Treaties Between the United States and Great Britain* (Boston: E.G. House, 1815), 5.

[57] Maas, "Return of the Massachusetts Loyalists," 468–84.

[58] Sutherland, *Law at Harvard*, 41.

[59] Chap. 77, Resolves 1804, Jan. 31, 1805.

[60] Stark dates the release of the Royall estate to 1805, but the 1799 petition places it at least six years earlier. Stark, *Loyalists of Massachusetts*, 293.

> circumstances under which he went away the whole was afterwards restored, a sum of money however remained in the treasury of the commonwealth – intended to provide for the support of two family servants who were left behind & to prevent their becoming public incumbrances [*sic*]. As the last of said family servants is now dead your Petitioners pray that the Treasurer of the Commonwealth may be authorized and directed to settle & pay over the balance of said deposit remaining in his hands to your said petitioners for the benefit of the heirs of said Isaac Royall.[61]

Belinda and Priscilla must be the two servants for whom these funds were reserved: there simply are no other candidates. That neither woman petitioned again after 1793 suggests that sufficient support payments had been made from the escrow set aside in the Commonwealth Treasury – or that both of them had died so soon after funds became available that no legal process could be brought on their behalf. I have not found any record of their deaths.

Isaac Royall, Jr.'s bequests to Harvard and other elite public interests in the new Commonwealth cemented his posthumous rehabilitation. In 1797, Hall petitioned the General Court seeking to recoup for Royall's heirs funds which, he claimed, had been wrongfully appropriated from the estate. He supported his claim by emphasizing Royall's "very large and liberal Donations … to the University at Cambridge, and to other Public and benevolent uses, in this Commonwealth."[62] James Henry Stark, in his biography of Isaac Royall, Jr., in *The Loyalists of Massachusetts and the Other Side of the American Revolution*, acknowledges that Isaac Royall, Jr.'s bequests to Harvard College and other public causes constituted an intentional and successful rehabilitation campaign.[63] The unpaid bequests also created important incentives for an array of Massachusetts elites to side with Hall and the Royall heirs. When those bequests were paid out, they reintegrated him, symbolically, into the elite symbolic landscape of Boston and Cambridge.

The capstone of Isaac Royall's re-rise came in 1815 when Harvard accepted its bequest and established the Royall Chair. This decision had to be both the effect and the cause of a complete reversal of reputational fortunes. And it paid itself forward. Isaac Parker, the first occupant of the Royall Chair, gave an inaugural lecture in which he invited "future benefactors" to follow in Royall's footsteps, and to fund not just a Chair but a school of law. They too could bask in the glow of the commitment to freedom and equality that motivated, Parker imagined, Royall's original bequest:

> [Law] should be a branch of liberal education in every country, but especially in those where freedom prevails and where every citizen has an equal interest in its

[61] Petition of James Scott and George William Erving, Collection Development Department, Widener Library, HCL, Harvard University, http://nrs.harvard.edu/urn-3:FHCL:12208682?n=1.

[62] Petition of Willis Hall, Collection Development Department, Widener Library, HCL, Harvard University, http://nrs.harvard.edu/urn-3:FHCL:10935266?n=1.

[63] Stark, *Loyalists of Massachusetts*, 293.

> preservation and improvement. Justice therefore ought to be done to the memory of *Royall*, whose prospective wisdom and judicious liberality provided the means of introducing into the university the study of law.[64]

The university as reputation-launderer – (re)cycling virtue from its production of socially beneficial knowledge to its donor base and back again – here rears its immemorial head. There is nothing "neo" about it.

Isaac Royall, Jr. was back in the 1 percent. Not only that: surprise! He was a fount of the liberality that defined the new republic. Meanwhile, the voice denouncing Royall as a slaveholder, slave trader, and exploiter of slave labor had been silenced over the long course of Belinda's miserable treatment – and perhaps by it. It now goes quiet for almost 200 years.

THE ROYALL/HLS SHIELD

The next major merger of the Royall brand with that of HLS came in 1936, when Harvard University adopted the Royall coat of arms as the Law School's mark (Figure 9.4). We are going to follow its rise and successive transformations up to 2016 when, in response to a Law School report concluding that the mark was so stigmatic that University leadership should "release us from" it, the Royall/HLS shield was disappeared.[65]

By 1936, a small near-hagiography of Isaac Royall, Jr. had come into print, provided by boosters of Medford and Harvard. An 1855 history of Medford by Charles Brooks picked up where the 1799 petition left off, regretting that Royall, a "timid" man,[66] was "frightened into Toryism"[67] by the outbreak of hostilities on April 19, 1775. "He was a Tory against his will,"[68] but only because "He wanted that unbending, hickory toughness which the times required."[69] But much could be said on Royall's behalf, including his bequest founding the Royall Chair.[70] "Happy would it be for the world, if at death every man could strike as well as he did the balance of this world's accounts."[71]

[64] Charles Warren, *History of the Harvard Law School and of Early Legal Conditions in America* (New York: Lewis, 1908), 301, quoting Isaac Parker's address from *North American Review* 3 (May 1816).

[65] "Recommendation to the President and Fellows of Harvard College on the Shield Approved for the Law School," March 2, 2016, 10 (hereinafter Mann Report), available through Michael Shammas, "After Months of Advocacy and Debate, Harvard Law Recommends Shield Change," *Harvard Law Record*, March 3, 2016, http://hlrecord.org/harvard-law-recommends-shield-change.

[66] Charles Brooks, *History of the Town of Medford, Middlesex County, Massachusetts, from Its First Settlement, in 1630, to the Present Time, 1855* (Boston, MA: James M. Usher, 1855), 172.

[67] *Ibid.*, 170.

[68] *Ibid.*

[69] *Ibid.*, 177.

[70] *Ibid.*

[71] *Ibid.*, 181.

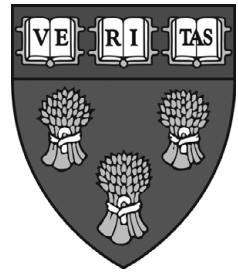

FIGURE 9.4 Royall/HLS shield. HLS retired and removed this shield in March, 2016 (see Figure 9.13). Harvard Law School Office of Communications.

Brooks acknowledged that Royall had been a slave owner, but it did not appear to weigh heavily against him: after all, "As a master he was kind to his slaves, charitable to the poor, and friendly to everybody."[72] This assessment comes just pages after Brooks reports Royall's instructions to Simon Tufts, by then his agent, on March 12, 1776, almost a year into his exile:

> Please to sell the following negroes: Stephen and George: they each cost £60 sterling; and I would take £50, or even £15 apiece for them. Hagar cost £35 sterling, but will take £25. I gave for Mira £35, but will take £25. If Mr. Benjamin Hall will give the $100 for her which he offered, he may have her, it being a good place. As to Betsey, and her daughter Nancy, the former may tarry, or take her freedom; and Nancy you may put out to some good family by the year.[73]

Perhaps it was kind to prefer a good place for Mira and a good family for Nancy. But the fire sale prices contemplated for Stephen and George suggest that they were old or disabled; they were being offloaded in all their vulnerability. Chan argues that the Royalls seldom separated mothers and daughters,[74] and we know that emancipating a slave without providing security for her support was against the law. Yet in his driving need for money, Isaac Royall, Jr. was blowing through multiple norms held even in a slave society. The sheer audacity of selling human beings because you can do it makes this letter, to us, a scandal; Brooks had no problem with it, or any of the lesser cruelties embedded in this episode.

When Charles Warren published a history of HLS in 1908, he lifted entire passages from Brooks' account, including the "kind to his slaves" nostrum,[75] but he balked at including Royall's letter to Tufts. In Warren's eyes, Harvard's reputational requirements – or maybe just space limitations – subjected Royall's character as a slave owner to a deliberate forgetting.

[72] *Id.*, 176.
[73] *Ibid.*, 178.
[74] Chan, *Slavery in the Age of Reason*, 167.
[75] Warren, *History of the Harvard Law School*, 179 (nostrum and another unacknowledged borrowing), 180 (a third unacknowledged borrowing).

All of that preceded the 1936 adoption of the Royall/HLS shield by a generation. We are about to trace the Royalls' ersatz heraldry as it morphed into a modern logo with various forms of ever-deepening oblivion covering Isaac Royall, Jr.'s political and moral deficits.

The backdrop of this struggle is, again, British practice. When a royal or aristocratic family chartered and endowed a college at Oxford or Cambridge, the Crown would authorize a shield, adapted ("differenced" in heraldry-speak) from the granting family's shield, for its exclusive use. The result was *another* official, state-sponsored system of marks representing the carrier's royal charter or memorializing the aristocratic or institutional status of its founding donors.[76]

Seven years after the founding of Harvard College, way back in 1641, its Overseers imitated this homeland practice by adopting a mark for the College. They authorized a "seal," shaped like a shield and bearing the word VERITAS across the figures of three books (Figure 9.5).[77] The mark was not granted by Crown authorities in London or in the colony. Once again, assumed arms.

Though the motto and design have changed from time to time,[78] this shield-shaped seal had remained in intermittent use for almost 300 years when, in 1935/36, the University tercentenary loomed. Outgoing President Abbott Lawrence Lowell had bestowed arms on the first seven residential houses and he was gunning to carry on.[79] He strove for authenticity when he could get it, but when the British College of Heralds charged a heavy fee to authenticate a pirated coat for Dunster House, "President Lowell resolved that thereafter the University would proceed heraldically on its own."[80] The new president, James B. Conant, who disliked Lowell's pomp and circumstance, ceded to him the role of "President of the Day" of the tercentenary celebrations. Doubtless following Lowell's cue, the director of the tercentenary celebrations decided that sub-units of the University should display heraldic shields in the upcoming celebrations. He commissioned Pierre de Chaignon La Rose, a member of the University's Committee on Arms, Seal, and Diplomas and its expert on heraldry, to design banners for the College, the graduate schools, and seven

[76] See, for instance, J.P. Brooke-Little, *Boutell's Heraldry*, rev. edn (New York: Frederick Warne, 1978), 231–33; Heraldry Society webpage on University Heraldry, www.theheraldrysociety.com/articles/topic/university-heraldry.

[77] Hammond, Part I, 261.

[78] Corydon Ireland, "Seal of Approval: Harvard's Motto, Veritas, Has a Long, Swirly History – Including Two Centuries of Invisibility," *Harvard Gazette*, May 14, 2015; Samuel Eliot Morison, "Harvard Seals and Arms," *Harvard Graduates' Magazine* 42 (September 1933): 1–15.

[79] On Lowell's reputational downfall and Harvard officials' March 2019 decision not to display his portrait in a renovated Lowell House, see Sheara S. Avi-Yonah and Delano R. Franklin, "Renovated Lowell House Will Not Display Portrait of Controversial Former University President Abbott Lawrence Lowell," *Harvard Crimson*, March 26, 2019, www.thecrimson.com/article/2019/3/26/lowell-portraits-removed.

[80] Mason Hammond, "A Harvard Armory: Part II," *Harvard Library Bulletin* 29.4 (1981): 361–402 (hereinafter Hammond, Part II), 370.

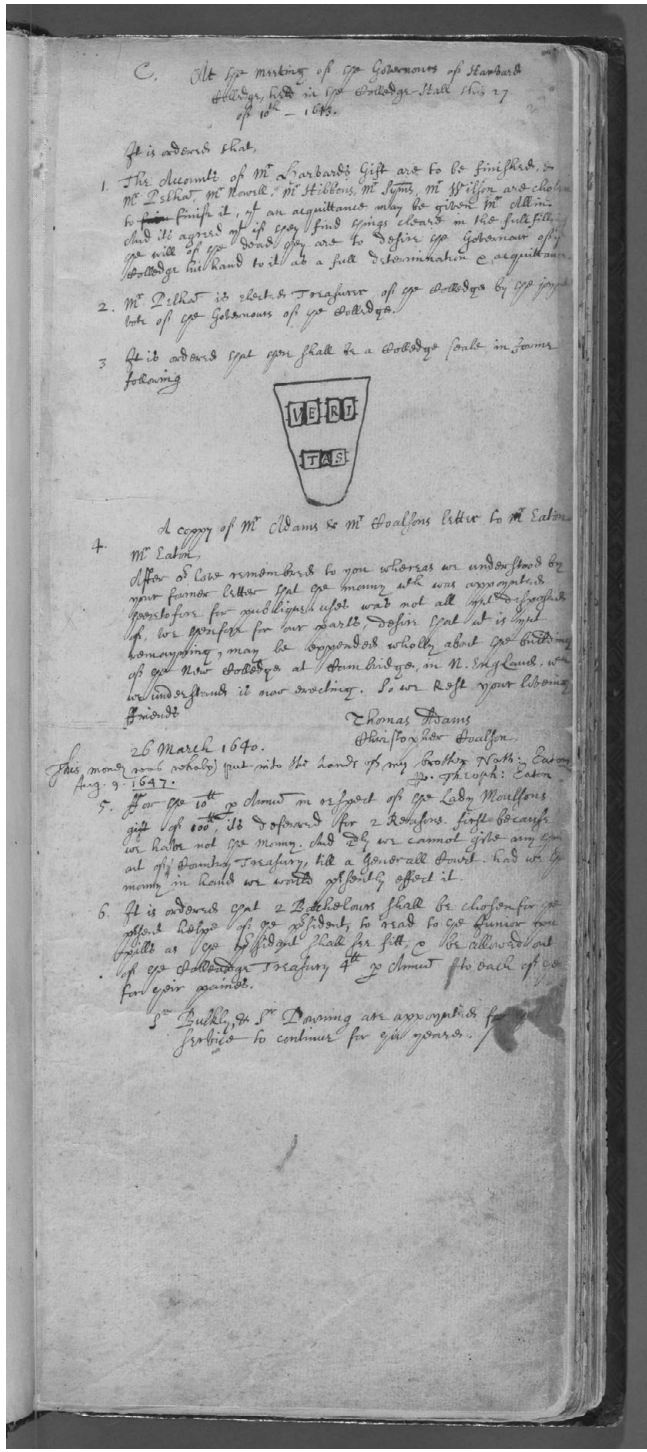

FIGURE 9.5 Original sketch of the Harvard seal. Harvard University. Corporation. College Book 1, 1639–1795. UAI 5.5 Box 1. Harvard University Archives.

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residential houses to fly at the tercentenary celebrations.[81] In a later defense of his insignia, La Rose invoked the British practice of bestowing coat armor on Oxbridge colleges.[82]

Not only did his suite of arms lack official authorization, they trenched on the exclusivity of the University's almost 300-year-old seal. Resistance came from Samuel Eliot Morison, the Chair of the University's Committee on Arms, Seal, and Diplomas, who had written in 1933 that the Harvard shield could be used by sub-units of Harvard with limited variation of the design, but that the seal was a legal mark for the exclusive use by the President and Fellows of Harvard College.[83] He was probably the moving force when, a year before the tercentenary celebrations, the Office of the Governing Boards issued a four-page pamphlet, *The Arms of Harvard University: A Guide to Their Proper Use*, asserting its exclusive right to the use of the seal:

> Any member of the University or any group of graduates is at liberty, as are the University and its various departments, to make decorative use of the Harvard Arms. But no one, except the Governing Boards of the University, may use the official Seal; for a seal is not a decoration but a legal symbol of authentication.[84]

The pamphlet instructed sub-units of Harvard that they could "combine the Arms with their own title" and advised them to seek advice from the Secretary to the Corporation (the term for the governing body made up of the President and Fellows) about how to draw up a design to surround it, such as an ivy garland or cartouche; however, it ruled out a circular inscription, which would make the overall design too similar to the seal. Commercial firms were instructed that they could use the arms as "a pleasant decoration on stationery (printed in black or red), on jewelry, book-ends, etc.," but not on "clothing, arm-bands, 'stickers,' and the like." "The Arms should always be treated with dignity[.]" For guidance, manufacturers using the arms were directed to the University Purchasing Agent. The pamphlet left it to be understood that the Office of Governing Boards would police uses inside the University and possibly even sue outsiders who exceeded the narrow

[81] Hammond, Part I, 261–97, 263–64 (authorities involved; Lowell's and Conant's attitudes toward ceremony); Pierre de Chaignon la Rose, "The Tercentenary Flags and Gonfalons," Appendix K to *The Tercentenary of Harvard College: A Chronicle of the Tercentenary Year, 1935–36* (Cambridge, MA: Harvard University Press, 1937), 448–51.

[82] La Rose reported that his "heraldic procedure follows a wide-spread ancient practice, especially common in the arms of the Colleges of the Universities of Oxford and Cambridge" ("Tercentenary Flags," 450).

[83] Morison, "Harvard Seals and Arms," 14–15.

[84] Office of the Governing Boards of Harvard University, *The Arms of Harvard University: A Guide to Their Proper Use* (1935). The pamphlet tracks the policies advocated in Morison, "Harvard Seals and Arms."

permissions granted.[85] In a tentative and uncertain way, the Corporation was invoking common-law and equitable rights to exclusive use of its trademark.[86]

La Rose's design for the College's shield adopted a design apparently ruled out in the pamphlet: it was "the present coat of the University, differenced, however, by the reintroduction of the chevron which for many years appeared on the Harvard seal."[87] He went even further into conflict with the pamphlet's proper-use guidelines in his design for the Graduate School of Arts and Sciences, adding a "'fess' (horizontal stripe) between the books instead of a chevron." La Rose defended these unauthorized innovations as "strictly in accord with heraldic precedents."[88]

For the Law School, La Rose's choice was obvious: the Oxbridge analogy led directly to the Royall shield. Isaac Royall, Jr., if he could have lived to see this, would have been delighted. He was being analogized to an aristocratic British family – even a royal one – founding an Oxbridge College; and the Law School *tout court*, not merely its first professorship, was being credited to his gift. There was not the slightest acknowledgement of Belinda or the other human beings held in bondage.

But once again the mark was controversial – this time, simply in its status as a mark. La Rose brought on the controversy by seeking official University adoption of his arms. In June 1937, he petitioned the University's Committee on Arms, Seal, and Diplomas to approve his designs: to make them official at least as far as the University went, and thus to elevate them closer to the status that their analogues occupied in the Oxbridge symbolic branding landscape.[89] Within days, the Committee forwarded La Rose's petition to the Corporation, thereby placing the proposal in President Conant's court.

The Corporation did not act on the proposal until early December,[90] and during this interval the Committee received a letter from the New England Historic Genealogical Society Committee on Heraldry attacking the La Rose designs in the name of heraldic purity. "[M]ost of the school arms" designed by La Rose were based on "false assumptions." We know by now that "assumptions" is used here as a term of heraldic art, not as a reference to an unproven premise in a logical argument. "[I]t would be a mistake" for the University to "put itself in the position of sanctioning" them. The Royall arms came in for particular criticism:

[85] It appears that the Corporation adopted a rule governing use of the seal at about this time.
[86] In 1935, trademark law in the US was largely based in state law, which provided remedies in common law and in equity. The comprehensive Lanham Act, from which the current federal trademark protection system derives, was not adopted until eleven years later. Trademark Act of 1946, 15 U.S.C.A. §§ 1051–1127. See Barton Beebe, *Trademark Law: An Open-Source Casebook*, version 6.0 (Summer 2019), 13–16, 20–22.
[87] La Rose, "Tercentenary Flags," 450.
[88] *Ibid.*
[89] Hammond, Part I, 265.
[90] *Ibid.*

> . . .this Committee has no evidence that the New England family of Royall had a right to the coat. It should be remembered that the unauthorized assumption of arms became extremely fashionable in our colony at about the time that the local Royalls seem to have begun using the arms of the English family of that name. The parentage of William Royall of Dorchester, the progenitor of the family, who died in 1724, is unknown to this Committee.[91]

The Royall name was dashed again, this time for pirating the authentic arms of an English family of the same name.

In the end, the Corporation gave a very limited sanction for the use of the designs: "the Corporation, while having no objection to the use for decorative purposes on the occasions of ceremony or festivity of the blazons proposed for the several departments or faculties, do not approve their use for other purposes."[92] The idea that the graduate faculties and residential houses should have official marks of their own would have given them equal status, as far as heraldry goes, with the University itself. But the University and its seal had already occupied this field, and the Corporation had no wish to share it. To this day, degrees are not granted until approved by the Corporation, and diplomas throughout the University bear the University seal; the La Rose shields are not allowed to authenticate – or even to adorn – these critical documents.[93]

By the time the Royall shield next became the object of campus controversy, its origins in heraldry and the controversies belonging to its heraldic dignity (or lack thereof) had been forgotten; over the latter half of the twentieth century, the semiotic register in which it signified shifted from the language of heraldry to that of commercial trademarks.

FROM NEW CORNE TO CORPORATE TRADEMARK

My colleague Charles Donahue fills in the next stage in the re-re-re-signification of the Royall brand: this time, he argues, as an effort to erase Isaac Royall and rewrite the shield quite completely. Donahue reports that early in his deanship, HLS Dean Erwin Griswold (served 1946 to 1967) had the shield inscribed on the pediment of a beautiful bookcase that had been permanently installed in the Treasure Room (now the Caspersen Room)[94] (Figure 9.6). The inscription originates in Chaucer's poem *The Parliament of Fowls*:

[91] Letter to Professor S.E. Morison, Chairman, Committee on Seals, Badges and Banners, Harvard University, from the New England Historic Genealogical Society Committee on Heraldry, November 6, 1937, repr. in Hammond, Part II, 397–401.

[92] Hammond, Part I, 265.

[93] Mann Report, 6 n.17.

[94] Charles Donahue, "The Harvard Law School Shield: Royall, Chaucer, and Coke," https://exhibits.law.harvard.edu/harvard-law-school-shield-royall-chaucer-and-coke#pediment. See also Bruce A. Kimball and Daniel R. Coquillette, *The Intellectual Sword: Harvard Law School, the Second Century* (Cambridge, MA: Harvard University Press, 2020), 564–69.

FIGURE 9.6 Bookcase in the Caspersen Room with the Royall/HLS shield. Brooks Kraft.

> For out of olde feldes, as men seyth,
> Cometh al this newe corn from yer to yere;
> And out of olde bokes, in good feyth,
> Cometh all this newe science that men lere.[95]

As Donahue reports, this was a favorite source for the English jurist Sir Edward Coke, to whom it signified the ever-renewing traditionalism of English common law: "To the Reader mine Advice is, that in Reading of these or any new Reports, he neglect not in any Case the Reading of the old Books of Years reported in former Ages, for assuredly out of the old Fields must spring and grow the new Corn[.]"[96] And for that reason, in turn, it was a favorite motto for Griswold, who borrowed from it for the title of his memoir, *Ould Fields, New Corne: The Personal Memoirs of a Twentieth Century Lawyer*.[97] There is no sign in Griswold's papers, housed in Langdell Library, that he knew or cared that Isaac Royall, Jr. had been a major

[95] "The Parliament of Fowls," 1.22–25, in *The Works of Geoffrey Chaucer*, ed. F.N. Robinson, 2nd edn (Boston: Houghton Mifflin, 1961), 311.

[96] Edward Coke, *The Reports of Sir Edward Coke, Kt.* (London, In the Savoy: E. and R. Nutt and R. Gosling, 1738), sig. A5.

[97] Erwin Griswold, *Ould Fields, New Corne: The Personal Memoirs of a Twentieth Century Lawyer* (St. Paul, MN: West Publishing, 1992).

slaveholder and trader;[98] rather, Donahue suggests that Griswold probably thought it would be good to have less of Isaac Royall because of his doubtful loyalty to the American cause. And so he rewrote the shield in the key of Coke, as a symbol of the ever-stable, ever-renewing fount of human wisdom that is the common law.

This was a normatively rich, highly self-congratulatory gloss on the shield. Senior colleagues have told me that, to them, this was *what the shield meant*. It anchored, in their minds, high ideals for the proximate relationship between law and justice. For them, the association with the Royall family, much less with its slaveholding and slave-trading practices, was not even forgotten: it was simply and completely *unknown*.

Fast-forward to the postwar Law School, when the shield began to appear on a few "old school ties" (Figures 9.7 and 9.8). In an eerie echo of the bottles then still buried in the slave quarters' yard at Isaac Royall's house in Medford, HLS Professor Archibald Cox had it embossed on a wine bottle (Figures 9.9 and 9.10). The 2016 HLS report recommending the shield's removal observes that its use expanded dramatically in the mid-1990s.[99] This is when it appeared carved in wood as a presiding emblem high behind the bench in Ames Courtroom, and replaced the University seal behind the introductory matter to Ames Competition videos.[100] It began to appear *everywhere*: on letterhead, mats laid down to protect people from slipping when entering buildings on rainy days, webpages, syllabi, infinite varieties of Law School swag offered for purchase at the Coop or given away at conferences, retreats, fundraisers, alumni gatherings, graduation celebrations, et cetera.

In cultural use, it was becoming a logo, the equivalent of the Nike swoosh or the (football) Patriots' helmeted avenger. All of this was in flagrant violation of the restrictions set by the Corporation in 1936, of course, but who cared? It was also quite out of tune with Griswold's lofty ambitions for the resignified shield, but who needed anything so heavy? Let a thousand shields bloom!

The dean under whom this efflorescence took place, Robert C. Clark (served 1989 to 2003), still speaks of developing the School's "brand," especially to distinguish it from Yale Law School. HLS was vastly larger, more international, more global, more connected to its sister professional schools:[101] a city to Yale's club. The "university as brand" – complete with a charismatic mark – had arrived at HLS. Clark, who remembered enjoying the mentorship of Griswold during his deanship, has repeatedly told me that he saw the shield through the "ould fields, new corne"

[98] Karen Beck, email correspondence with author on February 20, 2020 (on file with the author). I was on the verge of checking Griswold's papers in the University Archives when the COVID-19 closures made that impossible.

[99] Mann Report, 6.

[100] Meghan M. Green, HLS Office of Communications, email correspondence with author on April 2, 2020 (on file with the author) (photo galleries of Ames Courtroom, graduation ceremonies, etc.).

[101] Conversation with Robert C. Clark, April 8, 2020.

FIGURE 9.7 Advertisement. *Harvard Law School Bulletin* 21:1 (October 1969).

FIGURE 9.8 Wm. Chelsea LTD, Scarsdale, NY, "Harvard Law School Silk Necktie." Harvard Law School Library, Historical & Special Collections.

lens, which had effectively erased its Royall origins. Nor did he associate the Royall Chair, which he selected for himself when he became dean, with the shield, or with slavery. During this period, I can find no inkling in the Law School's branding landscape of a taint on the shield or its family of origin. As late as 2005, the Charles Hamilton Houston Institute for Race and Justice celebrated its grand opening brandishing the three-garbs shield (Figure 9.11). For the time being, the shield was everywhere and presumed to be benign; the Chair was the dean's because the dean had it; and the original donor who linked them was forgotten.

Meanwhile, three miles away from the Law School, the institution founded to preserve Isaac Royall's actual home was shaking itself to its foundations to take seriously Royall's legacy as a slave owner and slave trader.

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FIGURE 9.9 Glass bottle with Royall family shield. Theresa Kelliher for the Royall House and Slave Quarters.

FROM THE ELEGANT ROYALLS TO THE ROYALL HOUSE AND SLAVE QUARTERS

In 1906, the Royall house in Medford faced demolition to make way for suburban homes. The Daughters of the American Revolution – made up exclusively of proven female descendants of patriot fighters in the Revolutionary War – bought the property and entrusted its care to a newly established nonprofit, the Royall House Association.[102] To them, the value of the house would have been its association with George Washington, who is said to have interrogated two British soldiers there, and with General John Stark, who encamped there.[103] They curated the site in the spirit of colonial-revival nostalgia. As Chan reveals, the Royall House Association

[102] Gladys N. Hoover, *The Elegant Royalls of Colonial New England* (New York: Vantage Press, 1974), 113.

[103] Royall House and Slave Quarters website, "The Property: Mansion House," https://royallhouse.org/what-youll-see/mansion-house.

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FIGURE 9.10 Heitz Wine Cellars, St. Helena, CA, "Wine bottle belonging to Archibald Cox." Harvard Law School Library, Historical & Special Collections.

FIGURE 9.11 Charles Hamilton Houston Institute for Race & Justice Grand Opening Celebration web page. Harvard Law School.

sponsored re-enactments of high tea out on the lawn, complete with white gentlemen and ladies in elaborate colonial garb and servants in blackface (Figure 9.12).[104]

Almost simultaneously, a similarly Tory interpretation of Isaac Royall, Jr. was underway in the form of a hagiography of the loyalists (such are the reversals wrought by time). In 1907, James Henry Stark published his massive *The Loyalists*

[104] Chan, "Slaves of Colonial New England," 56, fig. 3.1.

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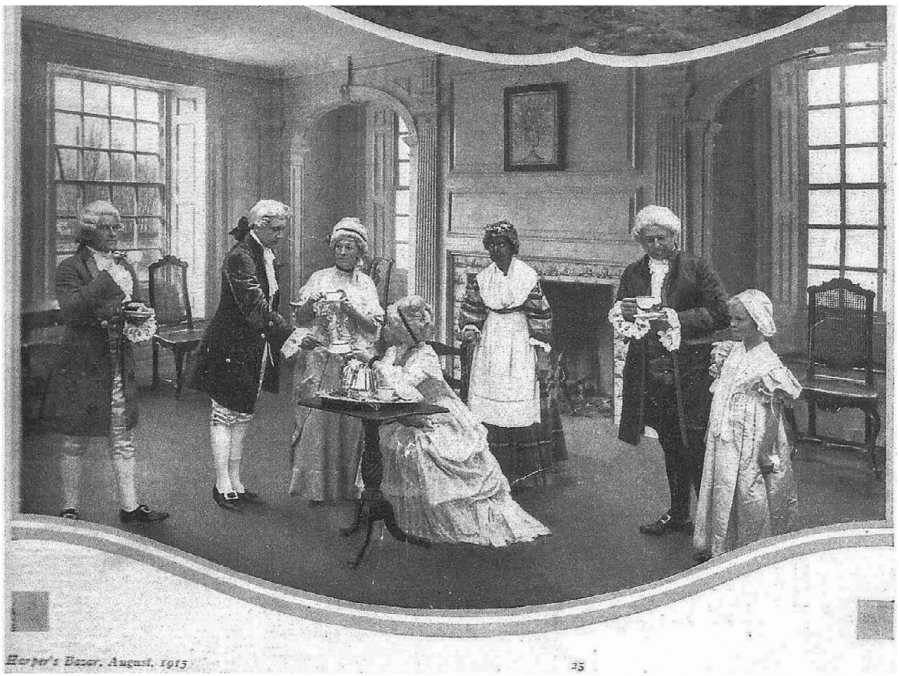

FIGURE 9.12 Tea ceremony at the Royall House. *Harper's Bazaar*, 1915.

of Massachusetts and the Other Side of the American Revolution, a thoroughgoing, family-by-family account of the victimization of the loyalists by the revolutionary elites, both during and after the Revolutionary War. He included detailed and highly favorable accounts of Isaac Royall, Jr. and his sons-in-law Sir William Pepperell and George Erving as well as his brother-in-law Henry Vassall.[105] Isaac Royall's colonial politics and flight to London were reinterpreted yet again: he and his family finally found voice as the darlings of pro-loyalist reactionaries.

Much-softened revisions of these apologies reappeared sixty years later, once again reworking Isaac Royall's reputation to serve the reputational needs of contemporary institutions, this time HLS and the Royall House Association. In a 1967 history of HLS, Arthur E. Sutherland styled the Revolutionary War a "civil war"; construed Royall's Anglican and Anglophile alliances to his credit; and reflected that the Feke portrait, then hanging in the entrance hall to Langdell Library, and the Royall Chair offered fitting reminders that, even at stressful moments in history like Sutherland's present – 1967 was plenty tumultuous politically in the US – "generous impulses could survive even ingratitude, disappointment, and disillusion."[106] Like many

[105] Stark, *Loyalists of Massachusetts*, 205–15 ("Pepperell"), 285–90 ("Vassalls"), 290–94 ("Royall"), 299 ("Erving").
[106] Sutherland, *Law at Harvard*, 35–36, 39.

historical accounts produced in mid-century America, Sutherland reconfigured Royall's enslaved human beings as "Negro 'servants'" and is otherwise silent on the subject.[107]

And just a few years later, in 1974, Gladys N. Hoover, a member of the Royall House Association,[108] published *The Elegant Royalls of Colonial New England* as her contribution to the upcoming national bicentennial. Explicitly following Brooks, she defended Royall as a timid mediator.[109] Juxtaposing him with Paul Revere the patriot and Sir William Pepperell the true loyalist, she urged: "Honor to the consciences of all three!"[110] But she did not think that the family's slavery legacy needed excuse. Of their years in Antigua, she noted the island's "equable and delightful climate" and optimal conditions for agriculture: "Conditions for growing sugar cane were perfect there and black slave labor was abundantly available."[111]

The turning point came in 1988, when Peter Gittleman, a freshly minted Master of Arts in Preservation Studies from Boston University, toured the house. The site included the Georgian mansion house built by Isaac Royall, Sr. and, only thirty-five feet away, the highly conspicuous slave quarters. The tour guide dwelt on Isaac Royall's wealth and de luxe way of life, making no mention of the enslaved people so manifestly connected to the site. As Gittleman later related, "my jaw dropped." He joined the Board and formed an alliance with Julia Royall, an eighth-generation collateral descendent of Isaac Royall already on the Board, and together they mounted a long, careful campaign to convert the Royall House to the Royall House and Slave Quarters.[112]

It was slow work. Clearly there was significant opposition within the Board. In 1999, it commissioned Chan to do her archaeological explorations, specifically to enrich knowledge about the lives of those enslaved at the site. She conducted digs over three seasons and published the results as her dissertation in 2003.[113] The Board held a Planning Retreat in June 2005 and began to revise the mission statement and to redirect the Association.[114] The following December, the Board announced "A New Vision for a New Age":

> . . .we have adopted a new mission statement:
>
> *The Royall House Association explores the meanings of freedom and independence before, during and since the American Revolution, in the context of a household of wealthy Loyalists and enslaved Africans.*

[107] *Ibid.*, 34.
[108] Hoover, *Elegant Royalls*, back cover.
[109] *Ibid.*, 78–94 (treatment of IR, Jr.'s politics), 94 (quoting Brooks' "balance of the world's accounts" conclusion as her own conclusion).
[110] *Ibid.*, n.p. (Preface).
[111] *Ibid.*, 2.
[112] Linda Matchan, "One House, Two Histories in Medford," *Boston Globe*, September 3, 2013.
[113] Chan, "Slaves of Colonial New England," 147–228.
[114] Minutes, Royall House Planning Retreat, June 11, 2005 (on file with the author).

> In charting this course, we recognize that many people will have strong emotional and philosophical reactions. Some may feel we are devaluing what has been the primary narrative thread, playing to political correctness. Others may feel that an organization that has been run and supported primarily by white people has no legitimacy to tell the story of enslaved blacks. Still others may feel it is a story that is too painful or embarrassing, that it would not appeal to visitors simply looking for a pleasant journey into the past. We do not underestimate the task before us. It will be difficult and, at times, unpleasant. It will require a different sort of organization than we have been. We would be sorry to lose some friends and supporters but trust that people who share our passion for the educational potential of this place will replace them. But these are all reasons to work harder, not to avoid the challenge.[115]

A majority of the Board was moving forward even if it meant that some members and donors, strongly opposed to the new direction, resigned or closed their checkbooks. The reformers changed the site's name and embarked on its top-to-bottom reinterpretation.

Meanwhile, on an entirely separate path, HLS was also moving toward a reckoning. In September 2000, Professor David B. Wilkins inaugurated a semi-annual Celebration of Black Alumni, welcoming hundreds of graduates back to campus for programs held under a huge white tent in Holmes Field. The lunchtime speaker – Coquillette, who was at the time preparing his history of the Law School, together with Kimball – was asked to share his research on the history of black students at HLS. The audience expected a retelling of a familiar story, from George Lewis Ruffin to Charles Hamilton Houston to Reginald Lewis, and that's what they got, but with a surprise. Coquillette distributed a "Black History Quiz" made up to look like a Law School examination, with images of important figures in the Law School's history. The first question – essentially, "Who is this person?" – was about a collection of three images: Isaac Royall, Jr. (taken from the Feke portrait), the Slave Quarters in Medford, and a group of enslaved black workers toiling in a sugarcane field. Spectacularly, no one could identify these images or how they were associated. Coquillette then dropped an Isaac-Royall bombshell: these were Isaac Royall, Jr., the donor of the first Chair in law at Harvard; his slave quarters in Medford; and enslaved laborers in Antiguan sugarcane fields.[116] Coquillette proceeded to publish a short "banner" article in the Law School's alumni magazine titled "A History of

[115] "A New Vision for a New Age: The Royall House in its Second Century," December 2005 (on file with the author).

[116] Daniel R. Coquillette, "A Celebration of Black Alumni: Luncheon Speech, September 22, 2000" (on file with the author); Coquillette, "Black History Quiz: Harvard Law School," September 22, 2000 (on file with the author). See also David B. Wilkins, Elizabeth Chambliss, Lisa A. Jones, and Haile Adamson, *Harvard Law School Report on the State of Black Alumni 1869–2000* (2002), 5–6, 57 n.4; Wilkins and Bryon Fong, *Harvard Law School Report on the State of Black Alumni II: 2000–16* (2017), 22.

Blacks at Harvard Law School." In sixty-seven words, he published, for the first time, the bare-bones story of Isaac Royall, Jr., his Chair bequest, and his slaveholding.[117]

Chan's and Coquillette's researches were simultaneous but independent.[118] Gathering the fruits of their work, I gave my 2006 lecture to the gathered law faculty: the title was "Our Isaac Royall Legacy."[119] Then, in 2015, Coquillette and Kimball published *On the Battlefield of Merit*, complete with their full account of the legacy of the Chair – and, subsequently, Harvard Law School itself – in enslaved labor.[120]

In Medford and at HLS, the stigma of slavery that Belinda had affixed to Isaac Royall's name was back.

ENGAGEMENT V. REPUDIATION

Knowledge that Isaac Royall, Jr. was tied to HLS through the Royall Chair *and* that he was a slaveholder and slave trader, called many to offer some kind of moral and/or political response. Two approaches emerged: clean hands, which required repudiation or distancing of some kind, and engagement, which could never be conclusive or fully perfect. The Royall House and Slave Quarters had chosen engagement. What would HLS do?

In 2003, when Elena Kagan stepped into the HLS deanship, she did not select the Royall Chair, which was available to her because Dean Clark had vacated it and the office simultaneously. Instead, she took the newly endowed Charles Hamilton Houston Chair. That Chair, funded by an anonymous gift, was named for a black HLS graduate who had played a leading role in fostering a cadre of black civil rights lawyers,[121] who is sometimes dubbed "the man who killed Jim Crow,"[122] and who mentored Thurgood Marshall, the Justice for whom Kagan had clerked.[123] This made a lot of sense: Coquillette had affixed the slavery stigma to the Royall Chair in his Celebrating Black Alumni lecture three years before, a fact of which Kagan had to be fully aware. Why go there? And the Houston Chair was brand-fresh; it's very possible that Kagan had even been involved in its creation. Quoted in *Harvard Law Today*, the School's in-house outlet for carefully groomed news about itself, she

[117] Daniel R. Coquillette, "A History of Blacks at Harvard Law School," *Harvard Law* (Fall 2000), 22.
[118] Conversation with Daniel R. Coquillette, March 20, 2020.
[119] This was later published as "My Isaac Royall Legacy" (see note 6 above).
[120] Coquillette and Kimball, *Battlefield of Merit*, 81–91.
[121] Kenneth W. Mack, *Representing the Race: The Creation of the Civil Rights Lawyer* (Cambridge, MA: Harvard University Press, 2012).
[122] Brett Milano, "The Man Who Killed Jim Crow: The Legacy of Charles Hamilton Houston," *Harvard Law Today*, September 5, 2019.
[123] Mack, *Representing the Race*; "Kagan Becomes Dean of Harvard Law School," *Harvard Law Today*, July 1, 2003.

proudly pointed to the lineage from Houston to Justice Marshall to herself.[124] It was a deft, elite, civil-rights- and self-affirming branding strategy.

Seven years later, however, when rumors flew that President Obama was going to nominate Kagan for a post on the US Supreme Court, a group of left-of-center law faculty of color attacked her decanal faculty-hiring record for being a diversity desert.[125] They basically accused her of talking the talk but not walking the walk. In response, nominee Kagan's supporters offered a Royall-themed talking point: the Royall Chair was by "tradition" the Dean's Chair, and yet Kagan had "declined" it when she became dean in 2003 precisely because of its slavery taint, taking instead the Charles Hamilton Houston Chair, symbolically the Royall Chair's new virtual opposite.

The tradition/taint/decline/instead narrative became a small but persistent element of Kagan's vicarious campaign for confirmation as Supreme Court Justice, debuting on May 12, 2010. HLS Professor Randall Kennedy offered support for Kagan's nomination with praise for her pride in being the first Charles Hamilton Houston Chair, but made no reference to her declining the Royall Chair.[126] His version was fully supported by Kagan's own public statement quoted in *Harvard Law Today*.[127] The full story complete with the taint of the Royall Chair, the tradition that it was the Dean's Chair, and Kagan's refusal to take it, first emerged in a post by HLS Professor Charles J. Ogletree, Jr., which claimed that *all* the Law School deans had held the tainted Chair.[128] HLS clinical faculty member Ronald Sullivan made the more modest claim that the Chair was merely traditionally the dean's.[129] And from there the narrative jumped to position papers supporting Kagan's nomination that national political groups submitted to the Judiciary Committee.[130] Sullivan

[124] "Kagan Becomes Dean."

[125] Guy-Uriel Charles, Anupam Chander, Luis Fuentes-Rohwer, and Angela Onwuachi-Willig, "The White House's Kagan Talking Points are Wrong," *Salon*, May 7, 2010, www.salon.com/2010/05/07/law_professors_kagan_white_house. The more tepid hesitation of civil rights centrists found its way into print later: Josh Gerstein, "Civil Rights Vets Uneasy with Kagan," *Politico*, May 16, 2010.

[126] Randall L. Kennedy, "The Media Jabs are Unfair, Kagan Will Fight for Equality on the Court," *huffpost*, May 12, 2010, www.huffpost.com/entry/post_603_b_573085.

[127] "Kagan Becomes Dean."

[128] Charles J. Ogletree, Jr., "Your Take: Why Elena Kagan is a Good Choice for the Supreme Court," *The Root*, May 12, 2010.

[129] Ronald Sullivan, "A Black Kagan Recruit Makes the Case for Confirmation," *thegrio*, May 13, 2010, https://thegrio.com/2010/05/13/a-black-kagan-recruit-makes-the-case-for-confirmation; George Curry, "Questions Linger about Obama's Second Supreme Court Pick," *Pittsburgh Courier*, May 19, 2010.

[130] NAACP Legal Defense and Education Fund, "Report on the Nomination of Elena Kagan to the Supreme Court of the United States," June 24, 2010, 22 n.130; Lawyers' Committee for Civil Rights Under Law, "Report on the Civil Rights Record of Supreme Court Nominee Solicitor General Elena Kagan," n.d., 7–8; Report of the American Civil Liberties Union on the Nomination of Elena Kagan to be Associate Justice of the U.S. Supreme Court," June 21, 2010, 24.

repeated it at Kagan's confirmation hearing.[131] And thence it entered the bloodstream of journalistic copy-and-paste, in articles written without any effort to fact-check the dubious elements of the story.[132]

After much searching, I have found no instance of Kagan relating the tradition/taint/decline/instead narrative; nor have I been able to find any press or other coverage of it before 2010. In addition, I have two further bits of evidence that Kagan was probably not deeply invested in repudiating Isaac Royall, Jr., and his Chair. Leaving the Chair empty was an option, but in 2003 she gave it to David Herwitz, a very distinguished, very senior tax and accounting specialist. I doubt that a supreme strategist – which Dean Kagan assuredly was – would have placed what she understood to be an institutional reputational liability on the shoulders of a faculty member with zero track record in social-justice mud wrestling. And then, when Herwitz retired, she gave it to me, when I was in the *most* bad-girl phase of my career. Armed with the Royall Chair, I could have done the institution a lot of damage. She seems not to have fully grokked the potential for virtue-signaling repudiation that Coquillette's revelations enabled.

And I think that's to her credit. This story can help us see one of the dangers of the repudiation route: the way in which it tempts those on it to craft Manichean good-and-evil patterns out of more complex and ambiguous human material.

It starts back in 2000, right in Coquillette's quiz lecture. His Royall narrative contains two exaggerations, both of which can be reduced to more accurate size using his, and Kimball's, own work on the Royall Chair! In 2000, it was not enough for Coquillette that the Royall Chair was the first Chair in law at Harvard; instead, Royall's "bequest established the Harvard Law School." And it was not enough that the Royall Chair "was the most senior endowed chair in the Law School"; rather, it was also "traditionally occupied by the Dean."[133] The latter exaggeration is probably the origin of the link to tradition found in the pro-Kagan campaigners' tradition/taint/decline/instead narrative. Turns out, sadly for the narrative, that it isn't true. Nor did the Royall bequest establish the Law School. Here is what happened instead.

As we have seen, the Royall Chair, first established in 1815, and first occupied by Isaac Parker in 1816, was initially a part of Harvard College. The Law School did not open until 1817.[134] In expanding from a single professorship to a School, the University launched on an experiment in legal education as a university-based professional education for postgraduates. As Coquillette and Kimball reveal, the

[131] "The Nomination of Elena Kagan to be an Associate Justice of the Supreme Court of the United States," Hearing before the Committee on the Judiciary, United States Senate, June 28–30 and July 1, 2010, Serial No. J-111-98, p. 356.

[132] Jacob Gershman, "Harvard Law Students Urge Removal of Slaveholder Reference from School Seal," *Wall Street Journal*, updated November 4, 2015.

[133] Coquillette, "Black History Quiz."

[134] Coquillette and Kimball, *Battlefield of Merit*, 98–99.

School's original business model – an inadequately funded Royall Chair held by Parker and dedicated to undergraduate lectures, when he could be spared from his duties as Chief Justice of the Massachusetts Supreme Judicial Court, plus a tuition-funded professor, Ashael Stearns, with responsibility for *everything* necessary for the construction of a Law School – was profoundly unstable.[135] The Royall Chair did not establish the School, though Parker, its first holder, tirelessly campaigned for it.[136]

And second, it was the Dane Chair, not the Royall Chair, that traditionally, in the School's first seventy-five-odd years, belonged to the dean. The Law School enterprise did not become viable until Joseph Story took a second endowed chair, the Dane Professorship, on carefully negotiated terms that made him the leader of the new School.[137] When Story died in 1845, Simon Greenleaf *relinquished* the Royall Chair to assume both leadership and the Dane Professorship.[138] The place was known as the "Dane Law College,"[139] and rightly so: Nathan Dane's endowment gift enabled the establishment of a full-fledged, sustainable School. He later made the loan that structured co-financing by himself and the College to create Dane Hall, the School's first freestanding building.[140] He contributed a major impetus to Story's career as treatise-writer par excellence.[141] And he was an anti-Royall in the sense that he consistently played a role in anti-slavery politics. He had drafted the Northwest Ordinance in 1787, which abolished slavery in the new territory; and participated in the secessionist Hartford Conference in 1814.[142] If a new twenty-first-century dean wanted to signal commitment to civil rights by *taking* a Chair traditionally associated with the leadership of the School – the Dane Chair, specifically – he or she might have to revive this forgotten, *anti*-slavery piece of HLS history.

In 1846, the Corporation issued new rules interrupting the Dane leadership tradition. They required that the senior professor would be considered the "head" of the School; that the Dane and Royall professors had joint responsibility for the course of instruction; and that the faculty "equally and jointly ha[d] the charge and oversight of the students."[143] In this arrangement, there was a "head" of the School

[135] *Ibid.*, 91–113.
[136] *Ibid.*, 91–97.
[137] *Ibid.*, 113–14, 131–39, 157.
[138] *Ibid.*, 158.
[139] *Ibid.*, 138.
[140] *Ibid.*, 136–37.
[141] *Ibid.*, 138.
[142] *Ibid.*, 132. To be sure, the Northwest Ordinance included a fugitive slave clause, and promised amity with Native Americans as long as there was no war (which did happen, with calamitous results for the tribes).
[143] *Ibid.*, 336 n.9 (quoting the Harvard Law School Catalog, 1852–53, 28, but noting that the same policy had been in place constantly from 1846).

but no dean, and both the Royall and Dane Chairs were subordinates with defined responsibilities.

In 1870, President Eliot erased this teamwork division of labor when he inaugurated the office of dean and persuaded Christopher Columbus Langdell to fill it[144] – as the Dane Chair.[145] The President wanted, and got, a strong dean with the power to make big changes and answerability to him rather than to a disorganized passel of colleague-subordinates.[146] The Dane Chair was back on top, and for the first time it was the Chair of a dean.

But Langdell proceeded to break the revived link between the Dane Chair and the leadership role by holding onto the former when he resigned from the latter in 1895.[147] Between Langdell and Robert C. Clark there were nineteen deanships, but only two were Royall Professors. Joseph Henry Beale took the Royall Chair in 1913,[148] and served as dean in 1929/30; Edmund Morris Morgan occupied the Royall Chair from 1938 to 1950,[149] and served as acting dean in 1936/37 and from 1942 to 1945.[150] In neither case was there any relationship between their holding the Chair and serving as dean. Clark provided the first reason to think of the Royall Chair as the dean's Chair when he assumed it upon becoming Dean in 1989 and relinquished it when he returned to the faculty in 2003. There is a rumor, which I have heard several times but cannot substantiate, that Clark *took* the Royall Chair from its prior occupant because he thought that, as dean, he was privileged to hold it. The rumor, to be sure, supports the traditionally-the-dean's-chair line but only as an urban legend: it can't be true. Vern Countryman, the Royall Chair right before Clark, retired in 1987,[151] leaving the Chair vacant until Clark selected it two years later. Clark informed me – and I believe him – that when he left the deanship, he gave up the Royall Chair not to make way for the new dean but because he had cultivated the gift of the Austin Wakeman Scott Chair in part by promising the donor that he would be its first occupant.[152]

Thus the Royall Chair was not traditionally the dean's chair. Originally, the *Dane* Chair belonged to the head of the School; in the late nineteenth and through the twentieth centuries, *no* chair was associated with the deanship. Clark's one-off stint as both Royall Chair and dean provided the hook for an *invented* tradition that, like most invented traditions, is a pastiche of truth and fiction.

[144] Coquillette and Kimball, *Battlefield of Merit*, 4, 309.
[145] *Ibid.*, 309, 625.
[146] *Ibid.*, 308–11.
[147] *Ibid.*, 625.
[148] *Ibid.*
[149] Finding Guide to the Papers of Edmund Morris Morgan in HOLLIS, https://hollisarchives.lib.harvard.edu/repositories/5/resources/4434 (see "Historical/Biographical Information").
[150] "Deans of Harvard Law School," https://hls.harvard.edu/about/history/hls-deans.
[151] "Countryman, Vern," *AALS Directory of Law Teachers* (1988–89), 111.
[152] Conversation with Robert C. Clark, April 8, 2020.

I think there is a lesson here about the dangers of moral repudiation as a branding exercise. On the repudiation path, Royall, the Royall Chair, and their relationship to the School had to be aggrandized in order to more effectively convey a shocking taint and to deflect all the light in the room onto the virtue of the repudiator. This happened when Coquillette first introduced the HLS community to Isaac Royall, Jr., at the Celebrating Black Alumni event, and again when nominee Kagan's supporters embellished her careful decisions and messages about her Chair in an effort to make of them a good-against-evil story. Yet the Isaac Royall precedent is bad enough without exaggeration.

Much later, when the press began to add that Dean Martha Minow (served 2009–17) had also declined the Royall Chair, "traditionally reserved for the dean,"[153] the story made even less sense. She would have had to take it away from me to bestow it on herself (which she never suggested doing) and, by then, why would she? The taint was public knowledge and I was doing my sorry best to keep it alive by distributing the published version of my Chair lecture and taking tours for various HLS constituencies to the Royall House and Slave Quarters. Moreover, Minow's path was engagement, not repudiation. She hosted welcome-to-HLS dinners for 1L sections in the Caspersen Room so that she could point to the Feke portrait and invoke the Isaac Royall slavery legacy as an object lesson in the chasm that can separate law and justice.[154] She was acknowledging the hard work of moral sorting. The opposite of repudiation.

The momentum to repudiation would not begin its rush until 2015.

"ROYALL MUST FALL" AND THE DEMANDS

During the academic year 2015/16, HLS was the scene of multiple student movements focused especially on racial injustice in the world and at the School. Students mounted sustained and multi-front protests against their legal education and called for change. They re-re-re-re-signified the Isaac Royall/HLS shield to focus directly and exclusively on the fact that it memorialized the donor of the first Chair in law at Harvard *who was a slaveholder*. Isaac Royall, Jr.'s brand took a nosedive; the dean convened a special committee to make a recommendation about the shield; the committee recommended elimination of the Royall/HLS shield; and the Corporation acceded to that advice. The shield came down all over the School and throughout its many productions (Figure 9.13).

I was involved in the protests, in consulting with some of the protesters, in faculty discussion of the School's response to the protesters, and on the special committee empaneled to consider what to do about the shield. I was also personally denounced

[153] See, for example, Kristen Decarr, "Students Protest Harvard Law School Seal," *Education News*, November 7, 2015.
[154] Mann Report, 7.

FIGURE 9.13 Removing the shield from Ames Courtroom. Lorin Granger/HLS Staff Photographer.

as a racist by one of the protesters, in part for benefiting from the Royall Chair. Every step of the way was intensely controversial. It will be even more than usually impossible for me to be objective about what it all meant. But I'll try to write it so that those who disagree with my interpretation of it, and those who chose for themselves very different roles in it, can see it in retrospect as a story not only about social good and evil, or political wisdom and folly, but also about a brand and its mark.

And a note on method is also in order. The student activists (both right and left) and the HLS administration, and, more occasionally, the involved faculty, all had press strategies. They often staged events precisely for their value as public messaging. After these interventions, controversies – which were also performances – routinely followed. Groups and individuals accused one another of distorting, omitting, exaggerating, and grandstanding. Fights over meaning abounded. This was, in addition to being a social-justice conflict, a battle over a large assemblage of brands. In this chapter, I rely on the products of this struggle – journalism, an admittedly unscientific public opinion survey, physical/visible installations, open letters, intercepted meeting notes[155] – not as evidence of what really happened, but *as what happened*. This is an account of people deploying artifacts in a fight over multiple brands.

A brief introduction to the dramatis personae will help readers follow this story. The dean was Martha Minow, a lifelong center-left social-justice scholar, teacher, expert, and advocate. A group formed by students in the three-year Juris Doctor (or JD) program – mostly from the US – called Students for Inclusion, dedicated to ensuring that legal education at HLS foster "productive and contextualized

[155] Some documents that I rely on here were disclosed not by their authors but by pugilists in this struggle as part of their tactical weaponry, often against their authors. I have been unable to verify their authenticity, but – when I do have primary knowledge of their contents – they seem to me to be unaltered. When I am citing such a document, the footnote will indicate that it is "intercepted and of uncertain provenance."

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conversations on matters related to race, gender, and class,"[156] had been developing a critique of the School since Spring Term 2014. After the police killings of Eric Garner and Michael Brown in the summer of 2014, Students for Inclusion significantly expanded its local activism, becoming the School's most explicit engagement with Black Lives Matter and the national upsurge in racial-justice activism. A distinct group, initiated in the fall of 2015 by LLMs from sub-Saharan Africa, named itself Royall Must Fall and demanded, inter alia, removal of the Royall/HLS Shield. JD activists from Students for Inclusion joined Royall Must Fall as soon as it issued its first call to action, and Students for Inclusion reframed itself as a coalition of student groups named Reclaim Harvard Law School (aka Reclaim HLS, Reclaim, etc.). Reclaim's major achievements were a list of Demands for reform of the Law School, and a long-running occupation of a major lounge area at the center of student life, which they named Belinda Hall. Behind the scenes, if you were witnessing the whole thing from my perch on the faculty, Royall Must Fall and Reclaim merged around Thanksgiving, but the two groups retained separate public profiles. Because their agendas were distinct, they coursed through the upcoming year on very different pathways. Finally, Minow appointed Professor Bruce H. Mann to head a committee to address the issue of the Royall/HLS shield: in early March 2016, it issued what I will call the Mann Report recommending removal of the shield.

Protest started slowly and quietly, and got faster and louder over time. According to Students for Inclusion's published "Timeline of Student Activism" at HLS, its own commencement as an activist group dated to the spring of 2014, marked by some private meetings with Minow and Dean of Students Ellen Cosgrove.[157] It argued for what it called contextualized learning – learning law, in detail, as the effect and cause of a radically unequal society.[158] The following fall, it launched a tumblr, "Socratic Shortcomings," which displayed students' posts about the many failings of their teachers and each other.[159]

On December 7, 2014, a coalition of HLS student affinity groups posted an open letter to Minow urging her to address the crisis produced by the deaths of Garner and Brown and the failure of grand juries to indict their killers. The letter expressed students' anguish about racial injustice in America, their determination to use their legal training to uproot it, and their deep distress, described as trauma and

[156] Harvard Law School, "Student Organizations and Student Life: Students for Inclusion," https://archive-it.org/collections/8420?q=Students+for+Inclusion&page=1&show=Sites.

[157] Reclaim Harvard Law School, "Timeline of Student Activism for Diversity and Inclusion," https://reclaimharvardlaw.wordpress.com/timeline-of-student-inclusion-requests (hereinafter Timeline).

[158] Reclaim Harvard Law School, "Reclaim Harvard Law Demands," December 4, 2015, https://reclaimharvardlaw.wordpress.com/demands.

[159] Timeline (dating the inauguration of "Socratic Shortcomings" to November 11, 2014); for that first set of posts, see https://web.archive.org/web/20141111091309/https://socraticshortcomings.tumblr.com.

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exhaustion, about their semester-long deep dive into protest and activism. Invoking Garner's last words, they intoned, "We can't breathe." A follow-up letter urged Dean Minow to commit the Law School to a message about racial justice at least equivalent to ones that she had issued at the time of the Boston Marathon Bombing, the death of Nelson Mandela, and the Sandy Hook school shooting.[160] The coalition stated that "we expect" the dean to allow students, at their individual discretion, to postpone their exams, scheduled to begin on December 10; to provide them "grief/trauma counselors"; and to create school-sponsored programming on social-justice issues. They staged a die-in outside the last faculty meeting of the fall term in a dramatic bid for faculty support: an event I witnessed myself.

The dean's response did not satisfy the protesters. Together with Yale Law School Dean Robert Post, and in her personal capacity, Minow published an op-ed in the *Boston Globe* arguing that accountability and police reform were necessary for the preservation of the rule of law.[161] She held a public meeting on December 10 in Ames Courtroom at which students related their experiences of racism and marginalization at the School.[162] But the bid for exam postponement and trauma counseling met with stiff off-campus rebuke. Black alumni of the School issued strong objections to the exam-postponement proposal; for instance, one posted: "Nope. No. Absolutely not. You don't get an extension because this racism is killing you inside … A lawyer kind of has to be able to *function* in the face of grand jury decisions. That's part of the job."[163] Mockery emerged from right-wing media and quickly spread to centrist venues.[164] HLS exams took place as planned.

[160] Harvard Law Coalition, "Letter to Dean Minow and Harvard Law School Administration," December 7, 2014, https://harvardlawcoalition.wordpress.com.

[161] Martha Minow and Robert Post, "Trust in the Legal System Must Be Regained," *Boston Globe*, December 9, 2014.

[162] Timeline. This is my only source for this meeting.

[163] Elie Mystal, "Black Law Students Ask for Race-Based Exam Extension," *Above the Law Redline*, December 8, 2014, https://web.archive.org/web/20141227122301/https://www.atlredline.com/black-law-students-ask-for-race-based-exam-extension-1668250360.

[164] Chuck Ross, "'Traumatized' Georgetown, Harvard Law Students Demand Postponed Finals," *Daily Caller*, December 8, 2014, https://dailycaller.com/2014/12/08/tramautized-georgetown-harvard-law-students-demand-postponed-finals; Julia Glum, "Eric Garner Protests 2014: Columbia Law School Postpones Final Exams for Students Traumatized by Grand Jury Decision," *International Business Times*, December 9, 2014, www.ibtimes.com/eric-garner-protests-2014-columbia-law-school-postpones-final-exams-students-1745032; Maggie Lit, "Ivy League law school delays finals for students traumatized by Ferguson," *Campus Reform*, December 9, 2014, www.campusreform.org/?ID=6129; Charles C.W. Cooke, "Social Injustice Ate My Homework," *National Review*, December 9, 2019, www.nationalreview.com/2014/12/social-injustice-ate-my-homework-charles-c-w-cooke; Genevieve Belmaker, "Law Students Grieved by Grand Jury Decisions," *Epoch Times*, December 10, 2014, www.theepochtimes.com/law-students-grieved-by-grand-jury-decisions_1134922.html; Peter Schworm and Kiera Blessing, "After Protests, Harvard Law Students Request Exam Delay," *Boston Globe*, December 10, 2014, www.bostonglobe.com/metro/2014/12/10/harvard-law-students-request-delay-exams-amid-post-ferguson-national-emergency/Y57bkeocKzqG65T8vXrMtM/story.html.

Stung, student activists reconsidered their strategy. They made a decisive pivot from asking the Law School to side with them against racism, to aligning racism *with the School* and mounting a thoroughgoing critique of their legal education.[165] Early in Spring Semester 2015, Students for Inclusion sponsored a major conference, "Law School Matters: Reassessing Legal Education Post-Ferguson," with Dean Minow appearing on a panel after the keynote address by HLS alums Gary Peller and Kimberlé Crenshaw. Professors modeled contextualized teaching of important 1L cases, and panels explored the history of racial activism at HLS and the contributions of critical race theory to the study of law.[166] The road to the Demands was now under construction.

Over the remainder of the semester, Students for Inclusion and affinity groups met with Dean of Students Ellen Cosgrove several times with reform proposals, including student access to faculty meetings and disclosure of the names of faculty on Law School committees and of lists of recent faculty visitors; course evaluation questions about contextualized learning; and changes to orientation. Students for Inclusion co-sponsored teaching awards for five faculty members, most of whom were, conspicuously, visitors.[167] During this time, I also remember large meetings of activist students with regular and clinical faculty who supported institutional reform, at which we discussed a broad array of possible changes such as a mandatory 1L course focused on social justice and student representation on important faculty committees. The spring and early fall of 2015 were thus the Time of Closed Meetings, hours and hours of them, in which students met with administrators, students met with faculty, faculty met with faculty, administrators met with faculty – in small and large groups, one-on-one – to seek out common understandings of the possibilities for institutional change.

Campus activism lurched back into the public eye in the middle of Fall Semester 2015. The impetus came from our LLM program, a one-year Master's Degree program largely focused on students coming from abroad with non-US law degrees. Some of our new LLM students arrived on campus that fall fresh from the massive protests underway in South Africa against large proposed increases in higher education tuition fees at public universities, which protesters saw as a way to cement post-Apartheid racial inequality in South African society. One element of those protests was a demand that Rhodes Must Fall: that statues of Cecil J. Rhodes – a primary architect of South African Apartheid – be removed from a central plaza at the University of Cape Town and from a façade niche at Oriel College, Oxford. Another

[165] Anonymous faculty informant.
[166] Timeline. For a video of one of the panels, see The Systemic Justice Project at Harvard Law School, "Contextualization in Legal Education: A Teach In," https://youtu.be/RE8wG89_Jkw.
[167] Timeline. This is my only source for the narrative above.

was an effort to critique and reimagine the substance of higher education that protesters framed as "decolonizing the curriculum."[168]

Arriving from that heated context, several LLMs from sub-Saharan Africa explicitly announced a *Royall* Must Fall campaign. Their initial call to action, issued October 23, 2015, was almost entirely focused on the South African struggle. It invited "solidarity with the college students of South Africa in their brave stand against escalating fees . . . and against the continued economic and social oppression that black students continue to experience in South Africa."[169] It also launched the call for removal of the Royall/HLS shield, which was promptly taken up by *The Harvard Crimson* (aka *The Crimson*) as the whole point.[170] On November 18, Royall Must Fall issued an open letter shifting its full attention to HLS and the issue of the shield.[171]

To Royall Must Fall, the Royall/HLS shield was a "symbol of mass atrocities" committed in the brutal 1736 suppression of the slave uprising on Antigua. Seventy-seven slaves were burned alive, five broken on the wheel, six gibbeted, and thirty-six banished.[172] Two Royall slaves were caught up in this cataclysm of punishment: Hector, a driver, burned alive; and Quaco, banished.[173] Royall Must Fall took care to describe, in gruesome detail, precisely what being broken on the wheel involved.[174] They followed the lead of Coquillette and Kimball[175] in laying the responsibility for this cascade of cruel punishment at the feet of Isaac Royall, Sr. and Jr.; Coquillette has gone further, attributing it personally and directly to Isaac Royall, Jr.[176]

This is another instance in which making the moral case against Isaac Royall, Jr. as extreme as possible required getting slightly out ahead of the historical record.

[168] Amit Chaudhuri, "The Real Meaning of Rhodes Must Fall," *Guardian*, March 16, 2016; Zethu Matebeni, "#RhodesMustFall – It was Never Just about the Statue," *Heinrich Böll Stiftung*, February 19, 2018, https://za.boell.org/en/2018/02/19/rhodesmustfall-it-was-never-just-about-statue.

[169] Royall Must Fall Facebook page, at www.facebook.com/events/984985958190163.

[170] Andrew M. Duehren, "At Harvard Law School, Students Call for Change of Seal," *Harvard Crimson*, November 2, 2015.

[171] "An Open Letter to Dean Minow from Students of Harvard Law School: Royall Must Fall," *Harvard Law Record*, November 18, 2015, http://hlrecord.org/an-open-letter-to-dean-minow-from-students-of-harvard-law-school-royall-must-fall.

[172] David Barry Gaspar, *Bondmen and Rebels: A Study of Master–Slave Relations in Antigua* (Durham, NC: Duke University Press, 1985), 30–36.

[173] *Ibid.*, 32–33, 36.

[174] Antuan Johnson, Alexander Clayborne, Sean Cuddihy et al., "Royall Must Fall," op-ed, *Harvard Crimson*, November 20, 2015, https://www.thecrimson.com/article/2015/11/20/hls-royall-must-fall/.

[175] "[I]t is a historical fact that . . . [the Royall Chair] is directly linked to a slave revolt on the island of Antigua." Coquillette and Kimball, *Battlefield of Merit*, 81.

[176] Jennifer Schuessler, "Confronting Academia's Ties to Slavery," *New York Times*, March 5, 2017, www.nytimes.com/2017/03/05/arts/confronting-academias-ties-to-slavery.html?searchResultPosition=11.

The centrist Mann Report determined, instead, that it remains unclear whether Isaac Royall, Jr., or even his father, was actively involved in the suppression process.[177] The historical record is indeterminate. First, it is not even clear that there was a plot: historians disagree, with some designating the event a panic.[178] There can be no doubt, however, of the ferocity of the repression. Isaac Royall, Jr. was almost certainly in Antigua at the time: he would at least have witnessed it.[179] And he and his father were surely complicit, being integral to the island's planter class. But the premier study of the slave revolt and repression does not mention either father or son in its lengthy analysis of records of trials assigning blame and punishments, and of the legislative reports compiled soon after the events.[180] Many prominent planters played large roles in this terrible process, but the Royalls go unmentioned. We simply cannot know how close they were to the many, many decisions made then about interrogations, charges, convictions, and punishments.

But none of that mattered in the heat of denunciatory politics. In the activists' October 2015 rebranding of Isaac Royall, Sr. and Jr., accurately or not, they stepped anew into a classically late-twentieth-century species of extreme wrongdoer: they became violators of human rights not so much because of slaveholding and slave-trading but because of mass atrocities.

Royall Must Fall's second plea assumed that a new shield would be forthcoming and that it would symbolize the structural bias built into US society by its roots in the slave system:

> Replacing the seal would not erase the brutal history of the slave trade. Instead, it would appropriately acknowledge the dark legacy of racism that is presently hidden in plain sight. Many people see no clear connection between the slave trade and the present. That is how structural racism becomes entrenched; forgetfulness and indifference are tools of oppression. The refusal of our society to remedy past

[177] Mann Report, 3.

[178] See Gaspar, *Bondmen and Rebels*, 6–13 (probable plot); Jason T. Sharples, "Hearing Whispers, Casting Shadows: Jailhouse Conversation and the Production of Knowledge during the Antigua Slave Conspiracy Investigation of 1736," in Michele Lise Tarter and Richard Bell (eds.), *Buried Lives: Incarcerated in Early America* (Athens: University of Georgia Press, 2012), 35–59 (probable panic); and Mike Dash, "Antigua's Disputed Slave Conspiracy of 1736: Does the Evidence against these 44 Slaves Really Stack Up," *Smithsonian Magazine*, January 2, 2013, www.smithsonianmag.com/history/antiguas-disputed-slave-conspiracy-of-1736-117569 ("the verdict remains in the balance").

[179] See Chan, "Slaves of Colonial New England," 427–44, where Chan transcribes the account book of Isaac Royall, Jr.'s uncle and guardian Jacob Royall. Payouts for living expenses to the nephew stopped abruptly in 1736, suggesting a sudden departure from the Boston area. Chan (79) concludes that Isaac Royall, Jr. returned to Antigua, thus placing him on the island in time to witness, and perhaps participate in, the repression.

[180] Gaspar, *Bondmen and Rebels*, 3–62, 215–58. For an analysis of the same records as evidence of Akan culture among the Antiguan enslaved population, see Kwasi Konadu, *The Akan Diaspora in the Americas* (Oxford University Press, 2010), 133–40.

> discrimination has resulted in enduring racial disparities in nearly every quality-of-life metric in the United States.
>
> We cannot stop working toward the eradication of structural racism until every member of our society is treated with equal worth and dignity. Royall Must Fall.[181]

Two distinct social-justice visions are merged here. One version is both material and distributive: removing and replacing the shield would be a dramatic act highlighting the roots of contemporary racial maldistribution in the legacy of slavery and the slave trade; redistribution rectifying material racial disparities would (somehow) follow. But the other is symbolic and dignitary: the acceptability of the shield for all these years is just like endemic racism hidden in plain sight; repudiation of the shield would signify the reverse by transferring value from the shield to disrespected persons, producing a recognition of "the equal worth and dignity" of "every member of our society." Neither vision came with a plan for its realization. Though Royall Must Fall members stipulated that "The Royall crest is merely one aspect of [a] . . . broader justice project,"[182] the bottom-line call – Royall Must Fall – was for an erasure: it could be satisfied by disappearing the shield without any accompanying program of redistribution *or* recognition.

The next morning, November 19, the Law School exploded. Early arrivals in the main hallway of our biggest building, Wasserstein Hall and Caspersen Student Center, nicknamed WCC, reported black tape placed across the faces of some, not all, of the black faculty depicted in the "tenure" portrait gallery there (Figure 9.14).[183] Royall Must Fall quickly issued a statement announcing that they had created an anti-racism installation in the middle of the previous night. They claimed that they had put black tape across Royall/HLS shields in WCC and mounted educational posters about Isaac Royall, Jr. Then, they implied, their black tape had been highjacked and repurposed for defacement of the black faculty portraits.[184] No identification of the individuals responsible for either action has ever been made public.

Outrage ruled the day. When Professor Randall Kennedy, whose portrait had been among those defaced, told students that he didn't feel indignation because he didn't know who had done it or why – that it could even be a hoax – he provoked a second explosion from students "bristling with certainty" that the tape was a manifestation of the systemic racism of the School.[185]

[181] "An Open Letter to Dean Minow."
[182] Johnson et al., "Royall Must Fall."
[183] Brianna Rennix, "Portraits of Black Harvard Law Professors Vandalized, Covered in Black Tape," *Harvard Law Record*, November 19, 2015. I witnessed the early-morning crowd in WCC marveling at the portrait defacements.
[184] Statement from Royall Must Fall, *Harvard Law Record*, November 19, 2015, http://hlrecord.org/statement-from-royall-must-fall.
[185] Randall Kennedy tells this story in his op-ed, "Black Tape at Harvard Law," *New York Times*, November 27, 2015. Many indignant students related it to me at the time.

FIGURE 9.14 Black Tape Incident. Lark Turner.

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Given the sense of crisis that the black-tape episode produced, Dean Minow held a town hall meeting that very afternoon, the first of three that were attended by hundreds of students and by scores of faculty, administrators, and staff. These were open mike meetings; I attended the first and the last of them. The dean, and sometimes faculty and top administrators were gathered on the stage and students in the audience; the open mike ensured that speakers could hold the floor for long, passionate denunciations; and the dean was chronically unable to convince activist students that she was on their side. Predictably, perhaps, these gatherings intensified rather than allayed the sense of crisis.

Students for Inclusion and Royall Must Fall were flooded with new recruits, including more middle-of-the road students activated by the turmoil.[186] Students for Inclusion reformatted itself as Reclaim Harvard Law. Royall Must Fall and Reclaim Harvard Law began working behind the scenes on a major intervention targeting not only the shield but the HLS brand *tout court*. They merged around Thanksgiving, but kept distinct public profiles.[187]

By now, the University had an Office of Trademark Programs (OTP) with web-available rules requiring units of the University to obtain permission before licensing any Harvard insignia and warning third parties that the University planned to protect its name and marks to the full extent of its own policies and trademark law.[188] The website announced to the world that the University had registered the Royall/HLS shield as one of its marks with the US Office of Trademarks and Patents.[189] The transformation of the shield from (assumed) heraldry to decoration to logo to trademark had been completed.[190]

[186] Anonymous student informants.

[187] *Ibid.*

[188] Harvard University, "Policy on the Use of Harvard Names and Insignias," November 6, 2015, https://web.archive.org/web/20150910002658/http://trademark.harvard.edu/pages/policies-forms.

[189] Harvard University, "Trademark Notice," November 6, 2015, https://web.archive.org/web/20150909223817/http://trademark.harvard.edu/pages/trademark-notice. The shield had been registered as of March 6, 2012. Trademark Electronic Search System (TESS) Registration number 4146627.

[190] During the summer of 2019, formalization went a step further: the OTP posted "Guidelines for the Creation of a New Shield Design or Logo by Harvard Departments, Units, and Officially Recognized Harvard Organizations for Themselves or Their Activities," https://trademark.harvard.edu/guidelines-creation-new-shield-design-or-logo-harvard-departments-units-and-officially. The first posting I could find on the "Wayback Machine" (a search tool for past states of the web, available at https://archive.org/web) was August 9. The rules bar sub-units from designing new insignia until they have OTP permission to do so, set forth requirements for new insignia, and give the OTP the power to veto proposed designs. Clearly the OTP anticipated that communal disgust with Harvard insignia would not stop with the protest against the Royall/HLS shield. Note that the shield is now explicitly a logo: "The Harvard VERITAS shield, as well as the School shields and other official University logos ("Harvard insignia") are representations of the University and cannot be altered in any way . . . The shield shape is acceptable for new logos" ("Guideline 2.a").

It was against this regulatory backdrop that Dean Minow acted. Between November 30, 2015 and January 22, 2016,[191] she assembled the Mann committee, made up of faculty, alumni, students, and staff, with the charge to "study, discuss, and make a recommendation about the law school shield."[192] It is highly unusual at HLS for such a broad range of "stakeholders" to be included on any committee: this was about establishing a legitimate consensus on a community-wide issue. The job of the committee was to make a recommendation to the University President and Fellows – that is, the Corporation. Far from seeking to modify the permission granted in 1936 to make decorative but dignified use of the shield, the Law School was now seeking permission to change a legal trademark from its legal proprietor.

By the time the committee started to meet, a lot had happened. Much of it never made it into the press. But published as well as intercepted documents indicate the depth and breadth of the conflict going on at the School, and indeed were one of the many media in which the conflict was conducted.

On December 4, 2015, Reclaim HLS issued a list of eight Demands for institutional reform.[193] The Demands incorporated the Royall Must Fall agenda while also operationalizing the Students for Inclusion agenda across the breadth of the student-facing Law School. They brought to fruition hard work on Law School issues that had begun in earnest after the exam postponement request had blown up in students' faces.

Thus, Demand Number 1 called for the "remov[al of] the Royall family crest from the HLS seal." But the new document went further by demanding the creation of a permanent monument acknowledging "the institution's legacy of slavery," and renaming of the Royall Chair as the Belinda Chair *or* allocating the Chair to a scholar in critical race theory (which I manifestly am not).[194] This agenda far exceeds the mere disappearance of the Royall/HLS shield. It would have cost money and institutional effort, possibly required legal action (to deviate from the terms of a bequest), and modestly but substantively changed the educational and research profile of the School.

Other Demands sought (inter alia) the establishment of a Critical Race Program, with a tenured faculty member hired in a process featuring student input; equal status of clinical faculty with classroom faculty, including tenure; a mandatory 1L

[191] Mann Report, 1.

[192] Andrew M. Duehren, "Harvard Law School Will Reconsider Its Controversial Seal," *Harvard Crimson*, November 30, 2015. By early February, the Mann Committee was holding open meetings with the community. Claire E. Parker, "Committee and Activists Debate Law School Seal," *Harvard Committee*, February 5, 2016.

[193] Reclaim Harvard Law School, "Reclaim Harvard Law Demands," December 4, 2015, https://reclaimharvardlaw.wordpress.com/demands.

[194] *Ibid*. The Demands included a separate "Proposal for the Harvard Law School Committee on Diversity and Inclusion," setting forth detailed rules – "Within 14 days of the report's issuance, the Dean shall: . . ." – to govern the new committee.

course "contextualizing racial justice and inequality"; new student evaluations allowing students to assess faculty on whether they contextualized legal materials; establishment of an Office of Diversity and Inclusion outside of and coequal with the Dean of Students Office; improved financial aid for students of color and other marginalized student populations; and increased effort to enable students to begin careers outside the big firms.

The Demands were a detailed blueprint for reform. Sub-demands included, for instance, a timetable for hiring critical race theory specialists; mandatory cultural competency training for all faculty; student, clinician, and staff membership on all faculty committees; and full tuition forgiveness for any student committing to a "civic-minded career."

Taken together, the Demands sought a major reorientation of institutional energy, funds, and ways of doing business. Faculty and administrators privately exclaimed over the lack of insider knowledge about "how things really work" that the Demands betrayed, but – to me – they read as a very thoughtful list of sites for concrete institutional self-examination and reform. If students articulated the need for this much change, I thought, surely we would engage with them and examine our practices across the board.

Roughly simultaneous with the rollout of the Demands and in an act of graphic genius, activists adopted a counter-mark. They redesigned the Royall/HLS shield, now with three silhouetted black bodies bent under the heavy load of the wheat sheaves. It began to appear everywhere. In the context of the Demands, which it soon adorned, it was not about the taint *of the shield* but about the taint *of the School*. My own view is that this single act doomed the Royall/HLS shield. But it was an equivocal victory. Students were aware that the shield issue could be bait for the administration, absolving it of the onus levied by the full suite of Demands, but there was no going back.[195]

Reclaim HLS gave Dean Minow forty-eight hours to respond to its Demands, a move that personalized its address to her. When a group of Reclaimers showed up at her office on Monday, December 7 (a year to the day after the publication of the affinity group open letter), they were told she was traveling. In an email to the community, the dean declined to respond on the students' terms: "Some students and staff presented a list of demands. We are, however, a community of many voices and hopes, and we have an obligation to provide and protect the opportunity for all to participate, speak and be heard."[196] Though the dean's door remained open to Reclaim HLS and Royall Must Fall, it was closed to the Demands.

[195] Anonymous student informant. For the counter-mark, see https://www.youtube.com/watch?v=Zns7IQycN3s.

[196] Andrew M. Duehren and C. Ramsey Fahs, "Law School Students Protest Minow's Response to Demands," *Harvard Crimson*, December 9, 2015.

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Briefly, controversy gripped the School. Reclaim members met with three faculty members on December 5, the day after the Demands went public. One or two of the faculty supported a proposal for a major curricular effort, involving faculty and students over months in the development of a reform project for "the real world," perhaps focusing on mass incarceration or policing. Reclaimers pushed back, insisting that faculty solidarize with the Demands.[197] Students received death threats and were doxed in blog posts; they consulted with HLS administrators and at least considered seeking the aid of the FBI and Harvard University Police Department (HUPD), all in an effort to protect members' safety and to discover "who is behind the blogs."[198] On December 10, thirty-seven HLS students – twenty-three of them signing anonymously – criticized the Demands for attempting to infuse the curriculum with left ideology and to suppress not only academic freedom but also ideological diversity (code for conservative voices). In the open letter's comment section, its anonymous manager disclosed that a student had tried to sign it as "U.R. Acist."[199] The next day, thirty-three left-leaning regular faculty, clinical faculty, and staff (myself included) published an open letter joining in the call for reform at the School.[200] Dean Minow met repeatedly with students.[201] With thirteen other faculty members, I attended a December 14 meeting with student activists about strategies for securing reforms called for in the Demands. I have intercepted two sets of notes with fairly complete transcripts of this meeting.[202] I am struck by my optimism: I really thought that we would work together to get resolutions onto the agenda for faculty meetings. In retrospect, I look so naïve.

These open letters and meetings punctuated exam period. Soon, winter break depopulated the School, and January Term reconvened the teaching program but in highly fragmented ways. Activism had lost its theatre.

On February 15, 2016, Reclaim opened an entirely new front in its campaign. It staged an "occupation" of the large lounge at the center of WCC, which it renamed

[197] Anonymous, "Dec. 5 notes" (on file with the author). This document is intercepted and of uncertain provenance.

[198] Email from [name omitted] to Reclaim and Royall Must Fall members, December 6, 2015; Email to [name omitted] to Reclaim and Royall Must Fall members, December 8, 2015 (on file with the author). These documents are intercepted and of uncertain provenance.

[199] silentnomorehls, "Remove Demands that Infringe on Academic Freedom," posted to Responsible Speech at HLS, December 10, 2015, https://web.archive.org/web/20160111141406/https://responsiblespeechhls.wordpress.com (click on Comments to see discussion of the attempted "U.R. Acist" signatory).

[200] Andrew M. Duehren, "Law School Faculty and Staff Commend Student Activism," *Harvard Crimson*, December 11, 2015.

[201] Martha Minow, email to students, December 14, 2015 (referring to a recent meeting and offering times for a subsequent one). This document is intercepted and of uncertain provenance.

[202] Anonymous, "December 14 Notes," two versions (on file with the author). Like the documents cited in nn. 197, 198, and 201, this document is intercepted and of uncertain provenance. However, I was present at this meeting and the document accurately reflects my memory of it.

Belinda Hall.[203] At first an overnight event complete with drawn curtains and sleeping bags, the occupation evolved into a rich program of "justice school" teach-ins and meetings clustered in the center of the room and sometimes so well attended as to be standing room only. Posters lined the walls; meals were shared there; Reclaim held an alternative graduation in the space. The group got outsize exposure for its programming because that lounge is a passageway between two of the School's most heavily used buildings. For Reclaim, the occupation constituted an alternative law school within the School.[204]

The occupation brought into play the possibility of student discipline before the Administrative Board. A rule limiting posters to bulletin boards was openly flouted without consequence. Top administrators disagreed about whether the occupation avoided a rule against interfering with Law School programs and facilities, which has often led to protesters being disciplined. No one's access to or egress from Belinda was blocked, though the central area of the hall was in fact full of Reclaimers and their events. The space was effectively cancelled as a *lounge*. But the occupation was tacitly permitted, while complaints about it flooded into administrators' offices and students who found it inhospitable took alternate routes through campus.[205]

Intercepted emails show that, in the days immediately before the occupation, Dean Minow and leadership of both Reclaim HLS and Royall Must Fall had been meeting to produce a slate of reforms, but that the administrators and students were very far apart on what it should look like.[206] After launching the occupation, Reclaim seems to have abandoned this strategy, shifting to a sustained volley of criticisms of Dean Minow and her every move. The capstone event in this campaign took place on February 26 at Brandeis University, where, through spokesperson Brandeis Professor Anita Hill, the University honored Minow for her lifelong dedication to social-justice work. Her talk, "Bystanders, Upstanders, and Justice," discouraged bystanding and urged upstanding. Several Reclaim members, in collaboration with a Brandeis student group, upstood – by entering the lecture hall with signs denouncing Minow. They chanted during her remarks and remonstrated her during Q&A. So impoverished were Minow's and Hill's toolkits for defending the

[203] Amanda Hoover, "Harvard Law Students Occupy a School Building," *Boston.com*, February 17, 2016, www.boston.com/news/local-news/2016/02/17/harvard-law-students-occupy-a-school-building. Much of this paragraph also relies on my own memory of the occupation.

[204] *Ibid.*

[205] Nic Mayne, "*Harvard Law Record* Poll on Reclaim HLS Shows Divided Community," *Harvard Law Record*, February 29, 2016.

[206] Email from student to Martha Minow, February 8, 2016 (on file with the author); email from Dean of Students Marcia Sells to student, February 10, 2016 (on file with the author). These emails are intercepted and of uncertain provenance. Both emails cc'd a large group of students who were prominent in the leadership of Reclaim HLS and Royall Must Fall. Dean Sells publicly announced the slate of reforms on February 17: none of them matched any of the Demands. "Message from Dean Sells," February 17, 2016, https://hls.harvard.edu/message-from-dean-sells.

institutional legitimacy within which they envisioned effective upstanding that they both felt compelled to praise and thank the demonstrators.[207]

Through its spokesperson, Reclaim took responsibility for this action.[208] For what it's worth, the incident crashed my own confidence both in the group and in the Law School's response to it. The School had backed itself into a corner hiding behind the dean, leaving Minow alone out there to face the activists. And she was nonplussed that the protesters – whose Demands she had categorically refused to consider – scorned her vast trove of social-change knowledge. She seemed incredulous that she was being framed as part of the problem, not part of the solution. Meanwhile, Reclaim's personal focus on her, initiated with the forty-eight-hour ultimatum, was crystalized in the last student comment thrown at her at the Brandeis event: "You are constantly condescending, like you know what's best for us."[209] To me, the optics recalled not progressive wisdom, political opposition, or tough resistance, but rather the confrontation between a baffled, frustrated parent and her angry teenager.

I was not alone in my sense that alliances were being tested to and beyond the breaking point. During the week of the Brandeis protest, the *Harvard Law Record* conducted an (admittedly unscientific) poll to determine the level of support among students for the various Demands. Students could vote and post comments online; only students could participate, only once, and only anonymously. The *Record* published all the comments posted to the poll. This substantial, if random, archive of contemporary statements confirms my sense that, by the time of the Brandeis demonstration, many students who had been in solidarity with social-justice activists after the black-tape incident were stepping away and even turning against.[210]

Centrifugal forces surged dramatically on March 28, the first Monday after Spring Break. A student who had long criticized Reclaim, and who had co-sponsored the conservative-student open letter, mounted posters in Belinda that equated Reclaim HLS with Donald Trump, then a candidate for the Republican presidential nomination. Reclaimers promptly took them down, and proceeded to adopt a formal policy of removing further posters.[211] Calling Belinda "its own space," Reclaim declared that the occupation was an Office of Diversity and Inclusion and that, as such, it was entitled to "retain control over its own decorating policy to maintain a space that

[207] Abby Patkin, "Protesters Disrupt Gittler Lecture for Racial Justice," *the Justice*, February 26, 2016; Claire E. Parker, "Student Activists Protest Ceremony for Law School Dean," *Harvard Crimson*, February 26, 2016, www.thecrimson.com/article/2016/2/26/activists-interrupt-minow-brandeis. Minow's talk became a published paper the following year: "Upstanders, Whistle-Blowers, and Rescuers," 2017 *Utah Law Review* (2017): 815–37.

[208] Parker, "Student Activists Protest Ceremony."

[209] Patkin, "Protesters Disrupt Gittler Lecture."

[210] Mayne, "*Harvard Law Record* Poll."

[211] Claire E. Parker, "Amid Debate, Law School Responds to Free Speech Concerns," *Harvard Crimson*, April 5, 2016.

reflects its values."[212] For the rest of the week, initially carefully crafted limits on the physical scope of the occupation gave way. Reclaim now claimed ownership of Belinda. Meanwhile conservative students appeared in Belinda many times a day, their leader posting dozens of posters mocking Reclaim – which were promptly taken down by Reclaimers.

Yet another sudden reversal: Reclaim was now the stodgy establishment pestered by its own ludic protester. As Admitted Students Weekend loomed, tensions between them escalated – so much so that faculty and administrators alike were concerned that some students in Belinda Hall were on the verge of physically assaulting other students. The conservative students' posters were defaced; both sides accused each other of videotaping the action in violation of a Law School rule requiring advance consent. By Friday, administrators cracked down. They announced a new speech policy for the WCC lounge, requiring equal space for opposing posters and reminding students that poster removals, threats, and violence were violations of the student conduct code. They made a filmed record of activities for enforcement purposes; announced that "Matters are being referred to the Administrative Board as appropriate"; and prepared for arrests by asking HUPD to install plainclothes officers, which it did.[213]

After Postergate, Reclaim rapidly unraveled as a coherent organization. Confusing events abounded. Reclaim reported discovering recording devices under tables in Belinda and a classroom, but declined to cooperate with School and law enforcement investigators.[214] The public never learned who had put them there, how long they had been there, or what had happened to the tapes. Open letters quibbling with Dean Minow's smallest announcements and silences proliferated, with student affinity groups signing on en masse. Near the end of the semester, at speaker events, a Palestinian student affiliated with Reclaim but acting on his own called a Palestinian guest speaker, and a week later Tzipi Livni, former foreign minister of Israel, "smelly." The latter intervention was met with an intense wave of grief and rage over the anti-Semitism attributed to it. The student apologized; Reclaim-affiliated students posted angsted-out statements to Socratic Shortcomings; some faculty demanded discipline despite the fact that the student had not broken any rule; and the Dean denounced the second "smelly" comment *faute de mieux*.[215]

[212] Reclaim Harvard Law, "A Message from Reclaim Harvard Law," *Harvard Law Record*, April 1, 2016.

[213] Parker, "Amid Debate."

[214] Claire E. Parker, "Police Investigate Hidden Recorder at Law School," *Harvard Crimson*, April 10, 2016; Reclaim Harvard Law, "Update on Surveillance of Students of Color Fighting Racism in Belinda Hall," press release, April 12, 2016, https://reclaimharvardlaw.wordpress.com/2016/04/12/update-on-surveillance-of-belinda-hall.

[215] Claire E. Parker, "Minow, Law Students Condemn Perceived Anti-Semitism," *Harvard Crimson*, April 22, 2016; Parker, "'Smelly' Comment Reignites Free Speech Debate at Law School," *Harvard Crimson*, April 27, 2016, updated April 29, 2016. The fact that the student had

Reclaim's last demand was a pale survivor of its initially robust policymaking élan: transplanting the South African students' demand that "#FeesMustFall" to an elite private law school, Reclaim now demanded that all students admitted to HLS should attend tuition free.[216] But a free-tuition proposal in a public university setting transplants very awkwardly into the HLS context. HLS financial aid is entirely need-based; when a student and/or his or her immediate family have adequate resources to finance a very expensive year of attendance and attributed living expenses, that student not only receives no support but also pays tuition, which in turn goes into the pool of funds available for the School's activities, including its financial aid program. Within its many constraints, including the debt it imposes on many students who *do* qualify for financial aid, it is a progressive redistributive policy. The Reclaim proposal could not be implemented without a massive redistribution of financial aid funds from the School to the adult children of rich and well-to-do families. It made no sense from any imaginable left perspective. As a politically coherent voice, Reclaim went out not with a bang but a whimper.

The Royall Must Fall process was something else entirely. Chairman Mann's committee set up a website open to submissions from all members of the Law School community; held open meetings in which members of the community sat in ten-person circles for public reflection on the issue (no open mikes here!);[217] spoke, through committee members, with scores of constituents; met a few times; and, on March 3, issued its report. The dean promptly referred the report to the President and Fellows of Harvard College, moving the entire issue out of the Law School.[218] The Corporation was quick to accept the Committee's recommendation,[219] and within days about 200 shields all around the School began to come down.[220]

During the quiescent period of the Belinda occupation, weeks before Postergate, the Law School had cleaned its hands of the shield. Call it cooptation, call it rational deliberation: this process was calm, official, and formal; the committee was appointed by the dean and reported directly to the highest authorities in the University; and it got what it asked for: the removal of the Royall/HLS shield.

recently called a Palestinian speaker "smelly" derives from my memory; I cannot find any reporting of it.

[216] Reclaim Harvard Law, "Fees Must Fall," April 17, 2016, https://reclaimharvardlaw.wordpress.com/.

[217] For a photo of one of these events, see Parker, "Committee and Activists Debate Law School Seal."

[218] Memorandum to Members of the Harvard Corporation from Martha Minow, March 3, 2016; Letter of Drew Faust and William F. Lee to Martha Minow, March 14, 2016. Both documents are available through "Harvard Corporation Agrees to Retire HLS Shield," *Harvard Law Today*, March 14, 2016.

[219] "Harvard Corporation Agrees to Retire HLS Shield"; "Harvard to Retire HLS Shield," *Harvard Law Record*, March 14, 2016.

[220] Claire E. Parker, "After Corporation Approval, Law School Shield Quickly Disappearing," *Harvard Crimson*, March 21, 2016.

FIGURE 9.15 Drew Faust and Annette Gordon-Reed unveiling the monument in the Crossroads. Rose Lincoln/Harvard University.

The contrast between the two outcomes calls for comparative retrospection. But how to assess something as complex as Reclaim? You could say it was a failure because HLS officialdom never responded to its Demands. To be sure, Reclaim collaborated with Royall Must Fall in seeking removal of the shield and it is gone; and Reclaim demanded a monument to the School's legacy in human bondage, which did happen (Figure 9.15). But neither of those outcomes can be attributed to the Demands. The shield was disappeared in response to Royall Must Fall while institutional uptake of the Demands was explicitly refused; and the monument was unveiled in September 2017 by incoming dean John Manning as the kickoff event of the School's Bicentennial, entirely independently of the Demands.

More specifically, I continue to occupy the Royall Chair; the Chair has not been renamed; and the richly endowed center for the study of racial injustice has yet to appear. For the record, my position has consistently been that I will resign the Chair if a large constituency believes it has a better use for it that actively memorializes the Law School's slavery legacy and that has a reasonable chance of being put in place; and of course the dean can take it away from me at any time.

Overall, I think it's fair to say that not one single Demand was formally acknowledged or officially incorporated while the Demands were on the table.

Instead, in August 2016, Dean Minow appointed a Task Force on Academic Community and Student Engagement and charged it with identifying ways to promote "vigorous inquiry and debate" in a community that "embraces people of all races, sexes, identities, national origins, social and economic backgrounds, religions and political perspectives."[221] Professor Bruce Mann chaired the Task Force, and it had faculty and student members (no staff, no alumni). The Report reads to me as a translation of the Demands into institutionally tolerable language. In a not-very-veiled rejection of the zeitgeist of the Brandeis demonstration and of the post-Spring-Break occupation, the Report concluded that "Differing views and

[221] Report of the Task Force on Academic Community and Student Engagement (June 29, 2017), 1–2.

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identities must be respected and engaged, not dismissed or stereotyped" and that "it is incumbent on everyone to recognize that learning how to express and navigate differences of opinion on fundamental and difficult issues is an essential part of legal education."[222] The goal is to promote not diversity and inclusion alone, but "diversity, inclusion, respect, and belonging[.]"[223] The report recommended many changes for faculty, administrators, and students: for instance, in lieu of a required course in contextualized learning, the Task Force recommended that faculty be provided with resources to enhance their teaching on issues of "social, racial, and economic justice," and in lieu of a special professorship in critical race theory, the Report concluded that ongoing efforts to diversify the faculty "must continue."[224] The four students on the Task Force – joined by its only clinical professor – issued an "Addendum" (not a "Dissent") that denounced the group's investigation into student opinion as "utterly meaningless" and its recommendations as "worthwhile tweaks."[225] The Report and its Addendum were published on June 29, 2017, the penultimate day of Minow's deanship, suggesting that it was DOA, but in my own experience the spirit of the Task Force has very much animated the deanship of John Manning.

And so Reclaim HLS *was* highly productive, for good or ill depending on your politics. The movement matured many young activists and deepened their alliances and antagonisms in ways that will endow their careers; shocked many with the learning they underwent in all that turmoil; encouraged many teachers and administrators to deepen their consciousness about the unequal reception of our legal education on many dimensions of disadvantage and to alter syllabi, pedagogy, and programming. Many faculty strove hard to contextualize more in their teaching, both individually and in curricular and extracurricular programming. Administrators installed dozens of reforms, selected for their pragmatism in addressing ascertained student needs and for their non-resemblance to the Demands.[226]

But Reclaim also broadened a rising stridency among students, especially on the left, that their ideology must be manifest in their teachers' pedagogy; and confirmed in many hearts the precise opposite views to those that Reclaim espoused. My own journey with Reclaim, begun in admiration and hope, ended in melancholy and

[222] *Ibid*., 21.
[223] *Ibid*.
[224] *Ibid*., 22. In December 2018, HLS appointed an Assistant Dean for Community Engagement and Equity, not quite a Dean for Diversity and Inclusion but close. "Mark Jefferson Named Assistant Dean for Community Engagement and Equity," *Harvard Law Today*, December 3, 2018. As I was completing this chapter for final submission, I received an email that Dean John Manning sent to the entire faculty announcing a suite of reforms to address the George Floyd wave of Black Lives Matter protests. Among them: a new Charles J. Ogletree, Jr. Chair with a search for a critical race theory specialist to fill it. Email from John Manning, June 24, 2020 (on file with the author). As of July 1, 2021, that chair was filled by Guy-Uriel Charles.
[225] Addendum to the Report of the Harvard Law School Task Force on Academic Community and Student Engagement, (n.d.), 1.
[226] For instance, see Claire E. Parker, "Law School Aims to Level Playing Field with New Orientation," *Harvard Crimson*, September 16, 2016.

disenchantment in the post-Spring-Break unraveling of the organization. I am certain that the long-term activist genius of our students has by now recovered from that low point, and that they have done great things in the George Floyd renewal of Black Lives Matter energy, but I am sobered. Having come of age in an era when left protest devolved to bombings by underground radicals[227] and the Woodstock Festival flickered out in the dark shadow of the Rolling Stones' deadly Altamont concert,[228] I am disenchanted once again.

From its own perspective, I think, members of Reclaim would say that it had lost; but that it had won some important shifts in consciousness and practice even while losing. I am sure that – given the right conditions – their successors will try for institutional reform again.

Assessing the outcomes of Royall Must Fall is a simpler task. Here's my take: in the scrum between the activists and the dean, Royall Must Fall attained its specific goal at the expense of its broader one.

The Royall Must Fall bottom line was a demand for a disappearance. And that's what the Mann Report recommended. But two members of the Mann Committee – Professor Annette Gordon-Reed and one student – expressed their disagreement with that recommendation. In "A Different View" – again, nominally not a dissent – they argued that the Royall/HLS shield should be retained precisely *because* it was a constant reminder of the School's slavery legacy.[229] Without the Royall/HLS shield, they argued, everyone at HLS was in constant danger of washing their hands of Isaac Royall, Jr. and his stigma, and moving to an unwarranted complacency about the moral status of our vast enterprise.

I worry that precisely this is happening. For many members of the HLS community, removing the shield was good because it would cleanse the institution of a terrible, revolting, and *undeserved* taint. One reason Royall Must Fall's demand for disappearance succeeded on its own terms is that it managed to align three powerful sets of interests: that of protesters calling for removal or for removal-plus; that of many who loved HLS and wanted to affirm its basic goodness; and that of the custodians of the institutional brand, who of course did not want a logo dripping in blood. Seen as a trademark, the shield had become a liability to the Law School imagined as a brand: it could go. Again, whether you call that a success or a failure depends on your politics. I now regret my vote to eliminate the shield: in retrospect, it appears to me as the easy way out.

[227] Kirkpatrick Sale, *SDS* (New York: Vintage, 1974).

[228] James E. Perone, *Woodstock: An Encyclopedia of the Music and Art Fair* (Westport, CT: Greenwood Press, 2005); Lester Bangs, Reny Brown, John Burks, Sammy Egan, Michael Goodwin, Geoffrey Link, Greil Marcus, John Morthland, Eugene Schoenfeld, Patrick Thomas, and Langdon Winner, "The Rolling Stone Disaster at Altamont: Let it Bleed," *Rolling Stone*, January 21, 1970, www.rollingstone.com/feature/the-rolling-stones-disaster-at-altamont-let-it-bleed-71299.

[229] Annette Gordon-Reed, "A Different View," n.d., https://exhibits.law.harvard.edu/harvard-law-school-shield-timeline.

CONCLUSION

This chapter has been a story of three brands – that of a man and his family, that of an institution, and that of a social movement – through which people with ever-new and ever-surprising motives battled with and against each other for one of the richest resources of all: meaning. When Isaac Royall, Jr. sealed his will with a wax impression of his stolen heraldic mark – when Belinda and her allies in the free black community attempted to leverage the reputational downfall of Isaac Royall, Jr. in an anti-slavery campaign addressed to the white revolutionary elite – when Harvard turned to ersatz heraldry to make itself look like Oxford and Cambridge Universities – when the University converted a heraldic mark into a trademark and licensed it for sale on T-shirts and baseball caps – when Erwin Griswold and later Reclaim deployed the Royall/HLS shield to anoint and tarnish the Law School – they were involved in very serious symbolic play.

The Corporation made promises on HLS's behalf when it acceded to the recommendation that the Royall/HLS shield be retired. It announced that, in permitting the disappearance of the shield, "we do so on the understanding that the School will actively explore other steps to recognize rather than to suppress the realities of its history, mindful of our shared obligation to honor the past not by seeking to erase it, but rather by bringing it to light and learning from it."[230] But – with the exception of the plaque in the plaza outside WCC, and tours for members of the HLS community of the Royall House and Slave Quarters that I, the Alumni Office, and the Graduate Program organize, and that I chaperone whenever I can – after the spring of 2016, the Law School largely fell away from the Isaac Royall slavery taint in a state of moral exhaustion. In retrospect, the Corporation's promise on the Law School's behalf reads like a branding exercise, not an institutional commitment.

Whither the Royall slavery taint now? I cannot predict. While I wrote much of this chapter, during the terrible spring of 2020, we were in the midst of an immense national revival of Black Lives Matter that is sure to matter for the School, whether through protest or reform or both; through denunciation or engagement or both. After the pandemic, I will continue to do what I can with the Royall Chair, primarily by continuing in a modest way to make the Royall House and Slave Quarters tour a part of student, faculty, alumni, and staff life at HLS, and teaching and writing about Isaac Royall, Jr., as in the present chapter. The School may eventually find a better person for the Chair, but I don't currently have plans to resign it.

And this even though I discovered in January 2020 that the University still has a budget line, with $317,502 in assets as of January 2019, with Isaac Royall's name on it. It kicks off about $14,000 a year, which is used to defray my salary: a state of affairs that makes me queasy. As Kimball and Coquillette show in the second volume of their history of HLS, throughout the nineteenth century the University appropriated most of the income and all of the appreciation of the Weld Chair into general funds, limiting

[230] "Harvard Corporation Agrees to Retire HLS Shield."

the Law School to a small, capped *allowance* that fell far short of a professor's salary.[231] Doubtless it did the same with the much smaller Royall bequest. That would help explain why there is so little money in the account after more than two centuries' time for appreciation. It also means that the Royall taint is so thoroughly sprayed all over the University that it feels fetishistic and a little hysterical to claim that my Chair is dirtier than any other part of the institution. It even feels fictional to assert that that budget line "has Isaac Royall, Jr.'s money in it": that sum is an artifact of accounting, not a real link to the man and his evil way of making money. And who can warrant that Royall is the University's or the Law School's only or most morally dubious donor? Even this new discomfiting fact about my Chair is a branding problem: my choice is to make it known but to discourage efforts to make it a focal point of moral outrage when there is so much social suffering, right now, that so much more urgently calls for our engagement.

Looking back over this chapter's longue durée, vicissitude is the norm. Isaac Royall, Jr., his shield, and his Chair have had many meanings – often precisely the opposite of the ones they had had just moments before. Why are they so subject to secular revision? I think it's because he had a pretty ambiguous life, left a scant record, and was and remains sufficiently unimportant to be – relative to figures like Thomas Jefferson and George Washington, both slaveholders and both politically complex actors – reputational small change. The few things that can be known about him are like rocks on a beach: their GPS coordinates can stay precisely the same while waves of new political and moral consciousness transform the landscape around them, again and again. But, *mutatis mutandis*, the same can be said of Harvard Law School, its social-justice student movements, and even myself in my life as a brand. Our own moral certainties are historical artifacts: we labor over them, too often forgetting that they are contingent.

POSTSCRIPT

On April 26, 2022, Harvard University issued the massive *Report of the Presidential Committee on Harvard University and the Legacy of Slavery* detailing the institution's centuries-long involvement in slavery and subsequent racist regimes. In response, Dean John Manning of Harvard Law School announced that the School was renaming a central space of the School the Belinda Sutton Quadrangle and setting up a committee to commission an art installation memorializing its namesake; and inaugurating a Belinda Sutton conference and lecture series housed in Charles Hamilton Houston Institute for Race and Justice, then headed by HLS Professor Guy-Uriel Charles. In anticipation of these changes, which I regard as robust institutional ownership of the moral issues implicated in the Royall bequest and highly likely to ensure that the legacies of slavery at HLS will not be forgotten, I resigned the Royall Chair. Dean Manning announced that it would never be occupied again. Still, I intend to continue to conduct research into and teach about HLS's slavery legacies, and to take community tours out to the Royall House and Slave Quarters.

[231] Kimball and Coquillette, *Intellectual Sword*, 564–69.

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