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Making Blacks Foreigners: The Legal Construction of Former Slaves in Post-Revolutionary Massachusetts

Kunal M. Parker[*]

I. INTRODUCTION

How might one conceive of African-American history as U.S. immigration history, and with what implications for our understanding of immigration itself? The historiography of U.S. immigration has been heavily invested in producing an idea of immigrants as individuals who move from "there" to "here," with both "there" and "here" taken to be actually existing territorial entities. Even a cursory inspection of the titles of vastly different immigration histories—Oscar Handlin's *The Uprooted: The Epic Story of the Great Migrations that Made the American People*, Ronald Takaki's *Strangers from a Different Shore: A History of Asian Americans*, and Roger Daniels' *Coming to America: A History of Immigration and Ethnicity in American Life*—testifies to the centrality of spatial movement in historians' understanding of immigration. Over the years, African-Americans have been represented differently depending upon the kinds of spatial movement that immigration historians have elected to valorize.[1]

Until recently, African-Americans tended to fare poorly within the historiography of U.S. immigration because of the weight immigration historians placed on voluntarism in spatial movement. As it emerged in the 1920s, the "Whiggish" historiography of U.S. immigration celebrated the figure of the immigrant as an individual who "chose" to move from "there" (the Old World) to "here" (the New World) in search of freedom, opportu-

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[1]To avoid any confusion, I should make it clear that I am not suggesting that historians have written immigration histories that are organized *thematically* around spatial movement. Rather, I am drawing attention to the fact that spatial movement has featured prominently in historians' understanding of how an immigrant comes to be an immigrant.

nity, and so on.[2] Not surprisingly, this construction of the figure of the immigrant completely erased the African-American experience from immigration histories. Although subsequent immigration histories dropped the awkward "Whiggish" focus on the immigrant's quest for freedom and opportunity, the emphasis on voluntarism in movement persisted. Most immigration histories displayed a certain discomfort with representing the African-American experience as an immigrant experience.[3]

Under the pressures of liberal multicultural inclusiveness, there has been in recent years a concerted scholarly attempt to link African-American history to U.S. immigration history by underplaying the requirement that an individual move voluntarily from "there" to "here" in order to qualify as an immigrant, and by emphasizing the simple fact that African-Americans moved from "there" (Africa) to "here" (the New World). This fact—the brute fact of spatial movement—is taken to be the key to representing African-Americans as *bona fide* immigrants. Thus, in his general overview of the history of immigration to the United States, Roger Daniels represents African-Americans as immigrants by asserting that "the slave trade was one of the major means of bringing immigrants to the New World in general and the United States in particular."[4] In other words, while contemporary immigration historians have abandoned the focus on voluntarism in movement, which is an entirely salutary advance in our understanding of immigration, they have retained a view of immigration as a spatial movement from "there" to "here."

It is relatively easy to trace this specific linking of African-American history to U.S. immigration history to the pressures of liberal multicultural inclusiveness. Ideologues of liberal multiculturalism have placed immigration—understood as a spatial movement from "there" to "here"—at the heart of what they view as a robust American multiculturalism. For example, in a tract entitled *What it Means to Be an American*, Michael Walzer asserts:

> *This is not Europe; we are a society of immigrants, and the experience of leaving a homeland and coming to this new place is an almost*

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[2]I draw this representation of the "Whiggish" historiography of U.S. immigration from John J. Bukowczyk, *Migration and Capitalism*, 36 INT'L LAB. & WORKING CLASS HIST. 61 (1989) and Barry Goldberg, *Historical Reflections on Transnationalism, Race, and the American Immigrant Saga, in* TOWARDS A TRANSNATIONAL PERSPECTIVE ON MIGRATION: ETHNICITY AND NATIONALISM RECONSIDERED (Nina Glick Schiller et al. eds., 1992).

[3]Thus, although he recognized the significance of the slave trade in peopling the American colonies, Maldwyn A. Jones questioned "[w]hether or not . . . [Negroes] were immigrants in the strict sense." MALDWYN A. JONES, AMERICAN IMMIGRATION 27 (2d ed. 1960).

[4]ROGER DANIELS, COMING TO AMERICA: A HISTORY OF IMMIGRATION AND ETHNICITY IN AMERICAN LIFE 54 (1990).

> *universal "American" experience.* It should be celebrated. But the celebration will be inauthentic and hypocritical if we are busy building walls around our country. Whatever regulation is necessary—we can argue about that—the flow of people, the material base of multiculturalism, should not be cut off.[5]

In this rendering, immigration—described in resolutely voluntaristic terms as "the experience of leaving a homeland and coming to this new place"—is viewed as the "material base" of a thriving American multiculturalism. Immigrants bring distinctive cultural identities with them when they move from "there" to "here." Not surprisingly, if African-Americans are to participate on equal terms alongside others in a multicultural order founded upon immigration, they must also claim—or have claimed for them—"the experience of leaving a homeland and coming to this new place." This is something that a focus on the brute fact of African-Americans' movement from Africa to the New World—their lack of voluntarism in this movement notwithstanding—can readily accomplish.

The problem with this particular linking of African-American history to U.S. immigration history is that it simply reproduces the dominant historiographical view of immigration as a spatial movement of individuals from "there" to "here." In so doing, it completely misses the highly significant ways in which African-American history can compel a radical rethinking of immigration itself. Through an examination of a fragment of African-American history—the debates surrounding the proper legal construction of emancipated slaves in the context of poor relief administration in late eighteenth century Massachusetts—this Article attempts just such a rethinking.

At this juncture, one might well ask *why* it is at all necessary to rethink the dominant historiographical view of immigration as the spatial movement of individuals from "there" to "here." After all, this view of immigration has a venerable lineage, sits comfortably with celebrations of liberal multiculturalism, and corresponds to our sense of what immigration is "really" all about. I would argue that such a rethinking is imperative because this view of immigration fetishizes territory in ways that feed into, and ultimately enable, pernicious contemporary renderings of the problem of immigration, the solution to the problem of immigration, and, perhaps most important, influential legal-theoretical justifications of the solution to the problem of immigration.[6]

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[5] MICHAEL WALZER, WHAT IT MEANS TO BE AN AMERICAN 17 (1992) (emphasis added).

[6] Geographers have of course long been aware of the fetishization of territory in state practices. ROBERT D. SACK, HUMAN TERRITORIALITY: ITS THEORY AND HISTORY (1986). Unfortunately, their insights have had very little impact on dominant legal-theoretical approaches to immigration.

The contemporary American state's construction of both the problem of immigration and its solution reveals the extent of this fetishization of territory. Within official discourses and practices, the problem of immigration is that unwanted immigrants come "here;" the solution to the problem lies in keeping unwanted immigrants "there." Accordingly, the state devotes a significant portion of its energies to erecting fences to keep potential immigrants out, to patrolling its territory to weed out immigrants who have entered without its permission, to restricting resident immigrants' access to welfare on the theory that others will be discouraged from coming, and so on.

But the fetishization of territory also underpins influential legal-theoretical approaches to immigration that *justify* the contemporary American construction of the problem of immigration and its solution. Within these approaches, precisely because the immigrant is imagined as moving spatially from "there" to "here," the immigrant's claims upon the community—whether these consist of claims to enter and remain within the territory of the community or claims upon the resources of the community once within the territory of the community—might safely be deemed inferior, less deserving of recognition, or more susceptible to rejection.

It is worth exploring how the sense of the immigrant as one who moves spatially from "there" to "here" translates into the conviction that the immigrant's claims upon the community are susceptible to rejection. For the most part, we are not dealing here with explicit, crude, or vulgar nationalist arguments that might be dismissed out of hand. Rather, essential to this act of translation is the sense that the immigrant comes "here" as one who is already a member of an actually existing, legally recognized, territorial community. Unlike members of the community "here" who have no other community in which to turn, immigrants can always go "there" if refused admission "here;" always draw upon resources "there" if denied claims upon resources "here;" and always participate "there" if barred from participating "here." The possibilities assumed to be available to the immigrant "there"—typically, the country from which the immigrant comes—permit, sanction, and otherwise enable us to mark the immigrant's claims "here" as inferior to the claims of citizens.

Of course, given the vast resource differences that exist among the various countries in the contemporary world, any sense of comfort that we derive from knowing that immigrants can always levy claims upon their countries of origin is suspect. Nevertheless, this sense of comfort continues quite persistently to animate both the constitutional law of immigration and influential theoretical approaches to immigration. It rests upon some sense of the formal, legal equivalence of territorial states. In a world carved up into actually existing, mutually exclusive, and legally equivalent territorial states—a world in which memberships and places are represented by

passports, all of which look alike, even if the memberships and places they represent do not—it remains possible to refuse the immigrant's claims upon the community on the ground that every immigrant carries *some* passport that represents *some* country, a real place where the immigrant can levy his claims, even if everyone knows that those claims are likely to be frustrated there.

The idea that immigrants' claims upon the community might be refused at will on the ground that immigrants are citizens of another country has always informed the constitutional law of immigration. Within the register of the "plenary power doctrine" that underpins the constitutional law of immigration, the refusal of immigrants' claims has often adhered to the following logic. Precisely because immigrants are citizens of other countries, in all matters involving immigration, courts may safely transpose the redress of immigrants' claims from the realm of constitutional law to the realm of foreign relations. In this latter realm, the countries to which immigrants belong may be expected to take up immigrants' grievances with the United States. Accordingly, in *Chae Chan Ping v. United States*, a late nineteenth century case widely viewed as having inaugurated the "plenary power doctrine," the United States Supreme Court rejected the plaintiff's constitutional challenge to the first Chinese exclusion laws *inter alia* on the ground that China—the country to which the plaintiff belonged—could argue on the plaintiff's behalf in the arena of government-to-government relations.[7] Other examples of judicial invocations of the protections that immigrants allegedly derive from their countries of origin as a basis for denying their claims in American courts of law could be cited, but are unnecessary for present purposes.

This constitutional abdication of responsibility for safeguarding immigrants' claims upon the community finds its analogue in influential theoretical approaches to immigration that derive comfort from the fact that immigrants come from some other country in order to justify their representation of immigrants' claims upon the community as inferior.[8] First,

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[7]Chae Chan Ping v. United States, (Chinese Exclusion Case), 130 U.S. 581, 606 (1889). The Court stated:

> If the government of the country of which the foreigners excluded are subjects is dissatisfied with this action it can make complaint to the executive head of our government, or resort to any other measure which, in its judgment, its interests or dignity may demand; and there lies its only remedy.

Id.

[8]My object here is not to be exhaustive. Of course, there are all sorts of theoretical positions on the ethics of immigration restriction, including many that are entirely opposed to those I mention here. For a range of different positions, see FREE MOVEMENT: ETHICAL ISSUES IN THE TRANSNATIONAL MIGRATION OF PEOPLE AND OF MONEY (Brian Barry & Robert E. Goodin eds., 1992).

proceeding from the view that "[t]he primary good that we distribute to one another is membership in some human community," Michael Walzer has famously argued that territorially constituted communities—by which he means countries—are not morally bound to admit strangers into their territory because their own associational activities take precedence over strangers' claims to admittance. However, the fact that Walzer assumes everyone to possess membership in "*some* human community" betrays his conviction that strangers refused admittance have some country to which they can return. This conviction is then further revealed in Walzer's recognition that the claims of refugees might be entitled to special consideration precisely because they have no country to which they can return: "Might not admission, then, be morally imperative, at least for *these* strangers, who have no other place to go?"[9] Second, at the opening of her work on American citizenship, Judith Skhlar asserts that immigrants' claims for recognition of their historic suffering are less deserving of her attention than the claims of natives precisely because immigrants come from other countries: "The history of immigration and naturalization policies is not, however, my subject. It has its own ups and downs, but it is not the same as that of the exclusion of native-born Americans from citizenship."[10] The idea here is that because immigrants—unlike natives—come from somewhere else, a real place where they can levy their claims, the claims of natives to citizenship take precedence over the claims of immigrants to citizenship. Finally, Peter Schuck argues that immigrants who fail to naturalize reveal a lack of commitment to American civic life that ultimately robs their welfare claims of legitimacy. In his view, immigrants' welfare claims are marked as inferior precisely because immigrants cling to the countries from which they come.[11] As suggested by these legal-theoretical approaches to immigration, the understanding of the immigrant as one moving in space from "there" to "here"—with both "there" and "here" imagined as actually existing territorial entities—becomes critical to justifying a denial of the immigrant's claims "here." The fragment of African-American history explored in this Article seeks to challenge this understanding of the immigrant.

In late eighteenth century Massachusetts, the system of poor relief administration came closest to regulating what we recognize today as immigration; it sought to secure territorial communities against the claims of outsiders. Within this system, just as under contemporary immigration regimes, individuals were seen as moving in space from "there" to "here."

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[9]MICHAEL WALZER, SPHERES OF JUSTICE: A DEFENSE OF PLURALISM AND EQUALITY 31, 45 (1983) (emphasis in original).

[10]JUDITH N. SHKLAR, AMERICAN CITIZENSHIP: THE QUEST FOR INCLUSION 4 (1991).

[11]PETER H. SCHUCK, *The Devaluation of American Citizenship*, *in* CITIZENS, STRANGERS AND IN-BETWEENS: ESSAYS ON IMMIGRATION AND CITIZENSHIP 72 (1998).

"There" and "here" were taken to be actually existing territorial entities, typically towns. The fact that an individual came from some town community ("there") became critical to how the town community he had entered ("here") would deal with his claims. Legal responsibility for the recognition of the individual's claims lay with the town community from which he came; accordingly, an individual's claims could be refused "here" because they could be made—indeed properly belonged—"there."

As they emerged from slavery in the late eighteenth century, African-Americans threw this entire system into a crisis. While they had been slaves, African-Americans had been the legal responsibility of their masters. As subjects of claims, enslaved African-Americans were thus invisible to the town communities in which they lived and worked. When they emerged from slavery, however, African-Americans suddenly surfaced as subjects of claims who came from no place in particular; there was simply no actually existing territorial entity upon which to pin the legal responsibility for their support. African-Americans were "here" without having come from "there."

How were the claims of these new subjects to be handled? While racial ideology had everything to do with how the claims of African-Americans were handled, this racial ideology acquired significant form through a strategy, the logic of which was determined within the framework of a system of poor relief administration that rested upon a view of individuals moving in space from "there" to "here." In entirely brazen attempts to refuse legal responsibility for the claims of former slaves, town communities sought to represent former slaves as "foreigners;" they assigned "foreign" geographic origins to former slaves. Former slaves thus came to be represented as coming from territorial entities outside Massachusetts, typically from a place called "Africa," so that town communities would not be burdened with the legal responsibility of recognizing their claims.

The problem that African-Americans emerging from slavery posed for the system of poor relief administration—and the geographic origins that town communities assigned to former slaves in order to deal with the problem—exposes the fetishization of territory underlying the dominant understanding of immigration as a process of spatial movement from "there" to "here." From it, we can draw two important conclusions. First, the fact that immigrants move in space from "there" to "here"—such that the problem of immigration and its solution come to be imagined in territorial terms—might not be the critical fact about immigrants. If the African-American experience in late eighteenth century Massachusetts is taken as a guide, the problem with immigrants is revealed to be not so much the fact that they simply show up "here," but the fact that they emerge at given moments as *legally visible subjects of claims* on what we might think of as a "landscape of claims." This landscape of claims does not necessarily correspond to the territory of the community. It corresponds rather to the

public register within which individuals are legally recognized (and thus become legally visible) as subjects of claims upon the community. As long as they were slaves—and thus the legal responsibility of their masters—African-Americans did not pose a problem to the town communities in which they lived and worked. This was precisely because they were legally invisible on the landscape of claims. African-Americans became a problem for town communities—communities they had physically neither left nor entered—only once they were no longer slaves, no longer the legal responsibility of their masters, and thus legally visible on the landscape of claims.

Understanding the problem of immigration as one of managing immigrants' legal visibility on the landscape of claims—rather than as one of managing territorial boundaries—draws attention to the role of the state in constantly *making* immigrants legally invisible on the landscape of claims. Understood this way, keeping immigrants outside the territorial boundaries of the community appears to be only one—albeit an extremely important one—among various strategies of rendering immigrants legally invisible as subjects of claims. Other viable strategies include resolutely maintaining millions of immigrants in a state of "illegality" so that they do not dare articulate claims upon the community, simply refusing to recognize "legal" immigrants' claims for welfare, and so on.

Second, and more important, the state's invocation of the immigrant's coming from an actually existing territorial entity outside the territorial boundaries of the community as a basis for refusing the immigrant's claims upon the community is revealed with breathtaking clarity as the pure *effect* of a prior desire to refuse the immigrant's claims upon the community. Although African-Americans had in fact come from slavery, town communities assigned them geographic origins outside Massachusetts—in a place called "Africa"—with a view to representing them as "foreigners" who were the legal responsibility of "somewhere else." The object was purely to deny legal responsibility for former slaves. This assignment of geographic origins to African-Americans should be read not as underscoring a basic mismatch between former slaves and the immigrant who "really" comes from "somewhere else," but rather as underscoring the politics routinely underlying the construction of the "somewhere else" from which the immigrant supposedly comes. The point is that the state invokes immigrants' origins in some place outside the community when—and insofar as—this invocation serves to justify refusing the immigrant's claims upon the community. If there is an acceptance that the state invokes the "there" from which immigrants come to justify its refusal of immigrants' claims—which is not to deny that immigrants do "in fact" come from outside the territorial boundaries of the community—there might at least be a revision of influential theoretical approaches to immigration that uncritically invoke

immigrants' places of origin as a basis for justifying a refusal of their claims upon the community.

There have, of course, been some attempts to link African-American history to immigration history through a focus on the legal construction of free blacks, most notably in the extremely valuable work of Gerald Neuman. In his excellent survey of immigration restriction in the early Republic, Neuman describes (1) the ways in which several antebellum states, both free and slave, barred the entry of free blacks and (2) the ways in which the slave states sought to compel free blacks to leave slave territory on pain of incurring more or less horrific penalties, including re-enslavement.[12] However, Neuman operates with precisely the territorially-driven understanding of immigration as a spatial movement from "there" to "here" that this Article eschews. For his purposes, "a statute regulates immigration if it seeks to prevent or discourage the movement of aliens across an international border, even if the statute also regulates the movement of citizens, or movement across interstate borders, and even if the alien's movement is involuntary."[13] Not surprisingly, Neuman does not seek to advance our understanding of immigration through an exploration of African-American history in the way that is attempted here. By contrast, historians who have written about the free black experience in the antebellum United States have for the most part focused on themes such as race, the preservation of slavery, and so on without seeing the free black experience as a particular species of immigrant experience that might afford a critique of the pernicious fetishization of territory that underlies the contemporary construction of immigration.[14]

It should be pointed out at this juncture that this Article cannot pretend to capture the full complexity of the African-American experience of emancipation in late eighteenth century Massachusetts. Fortunately, it is possible to refer the reader to Joanne Melish's brilliant intellectual, social, and cultural history of the "problem of emancipation"—and the corresponding development of racial ideology—in late eighteenth century New England. Among other things, Melish argues convincingly that, decades before the full-scale emergence of the colonization movement, the successfully realized desire to rid New England of slavery was accompanied by the less successfully realized desire to rid New England of those who had

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[12]Gerald L. Neuman, *The Lost Century of American Immigration Law (1776-1875)*, 93 COLUM. L. REV. 1833, 1865-80 (1993).

[13]*Id.* at 1837–38.

[14]LEON F. LITWACK, NORTH OF SLAVERY: THE NEGRO IN THE FREE STATES, 1790-1860 (1961); IRA BERLIN, SLAVES WITHOUT MASTERS: THE FREE NEGRO IN THE ANTEBELLUM SOUTH (1974).

formerly been slaves.[15] White New Englanders were never able to remove black New Englanders from their midst. However, they were able to enact their rejection of black New Englanders in all sorts of ways; the attempt to assimilate emancipated slaves to the legal status of "foreigners" was one such way.

II. MAKING EMANCIPATED SLAVES FOREIGNERS

A. The Structure of the Late Eighteenth Century Massachusetts Poor Laws

In late eighteenth century Massachusetts, the immigration regime as we know it today—an autonomous legal regime in which the state regulates *on the basis of citizenship* both (1) individuals' access to, and presence within, its territory and (2) individuals' claims upon the community's resources—simply did not exist. These associated regulative functions—namely, the management of individuals' spatial rights and claims upon community resources—were performed through the Massachusetts poor laws. Although they traced their origins to Elizabethan arrangements for regulating the poor, the Massachusetts poor laws had developed their own distinctive logic by the end of the eighteenth century.[16]

The Massachusetts poor laws differed from contemporary immigration regimes in two critical respects. First, instead of citizenship, the legal concept of "settlement" or "inhabitancy" determined the individual's rights of access to, and presence within, territory as well as the individual's claims upon the community's resources by reason of age, illness, disability, and poverty. This does not mean that citizenship—understood in terms of the formal legal distinction between "citizen" and "alien"—was irrelevant. Citizenship mattered insofar as it marked individuals who lacked it with the traditional legal disabilities associated with the status of alien. A 1785 "Bill Declaring and Describing Who are Aliens and Who are Citizens of this Commonwealth" summarized these traditional legal disabilities as follows: "[N]o person who is an alien to this Commonwealth, can have or hold any estate of freehold or inheritance within the same, nor have any voice or vote in any election or in any public affair, or be capable of holding or exercizing

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[15] JOANNE POPE MELISH, DISOWNING SLAVERY: GRADUAL EMANCIPATION AND "RACE" IN NEW ENGLAND, 1780-1860 (1998).

[16] For an excellent concise treatment of the history of the poor laws in eighteenth century Massachusetts, see DOUGLAS L. JONES, *The Transformation of the Law of Poverty in Eighteenth-Century Massachusetts*, *in* LAW IN COLONIAL MASSACHUSETTS: 1630-1800 (Daniel R. Coquillette ed., 1984).

any office civil, military or ecclesiastical under the government thereof."[17] However, in all matters regarding the individual's rights of access to, and presence within, territory and the individual's claims upon the community's resources by reason of age, illness, disability, and poverty, settlement was the operative legal concept. Second, instead of the Commonwealth of Massachusetts, the relevant unit of discrimination was the town; to possess a settlement was to possess a settlement in a specific town.[18]

Taken together, these two features of the Massachusetts poor laws defined what it meant to be "foreign." Of course, as employed in late eighteenth century Massachusetts, "foreignness" was a polyvalent word; it referred then, as it does today, to those who were outsiders within the register of emerging notions of citizenship, nation, and blood. However, in all manner of legislative discussions, town documents, and popular understandings relating to individuals' spatial rights and claims upon community resources, "foreignness" was understood as a matter of lacking a settlement in a Massachusetts town. Thus, after the formation of the United States, citizens from other states—i.e., those *inside* a community being imagined in terms of citizenship, nation, and blood—were deemed "foreigners" so long as they lacked a settlement in a Massachusetts town. This notion of "foreignness" as a status constructed in opposition to the status of possessing a settlement in Massachusetts survived into the early nineteenth century.[19] It is in the context of this very specific understanding of "foreignness" that towns would attempt to assimilate emancipated slaves to the legal status of "foreigners;" the precise implications of being a "foreigner"—which will make clear why towns were driven to seek to assimilate emancipated slaves to the legal status of "foreigners"—will be discussed later in this section.

Indispensable to the Massachusetts poor laws' aim of regulating the spatial rights and claims to assistance of the poor was the sense that individuals moved in space from "there" to "here," with both "there" and "here" taken to be actually existing territorial entities, typically towns.

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[17] MASS. ARCHIVES, SENATE UNPASSED LEG., SC1, Ser. 231, No. 344 (1785).

[18] The dual shift involved in the emergence of an immigration regime that we would recognize today—the shift from settlement to citizenship, on the one hand, and the shift from town to state (and, later, nation), on the other hand—lay decades in the future, occurring only once tensions surrounding the influx of large numbers of European immigrants after 1820 threw the poor law system into crisis. I explore this shift in considerable detail in Kunal M. Parker, *State, Citizenship and Territory: The Legal Construction of Immigrants in Antebellum Massachusetts*, 19 LAW & HIST. REV. 583 (2001).

[19] For example, an 1814 tract on poverty classifies the inmates of the Boston almshouse as those possessing settlements in Boston, those possessing settlements in other Massachusetts towns, and "foreigners." ANONYMOUS, MISCELLANEOUS REMARKS ON THE POLICE OF BOSTON 5 (Boston, Cummings & Hilliard 1814).

Within the logic of the poor laws, at least theoretically, every individual possessed a settlement in—or, in the legal parlance of the time, "belonged to"—a particular town. This meant that he had legally recognized claims to relief *only* upon that town's treasury and legally recognized rights of residence *only* within the territory of that town. Vis-à-vis other towns, each town was compelled to recognize the claims and rights of those who possessed settlements therein. Thus, Town A was legally obliged to tolerate the presence, and meet the claims to poor relief, of all individuals who possessed settlements in Town A; Town B could physically transport to Town A all individuals settled in Town A if they happened to fall into need in Town B, and could further demand that Town A reimburse it for all expenses it had incurred with respect to such individuals. Thus, the claims and rights of the individual "here" (the town where such individual happened to be) were routinely shifted onto "there" (the town where such individual possessed a settlement).

Precisely because towns bore the fiscal burden of supporting all those who possessed settlements therein, towns very early developed a keen interest in keeping the settled population—as distinguished from the larger population that lived, worked, and paid taxes in the town—to a minimum. From the perspective of the towns, the settlement laws, which spelled out the means by which outsiders could obtain settlements in towns, furnished the most important means of preventing outsiders from acquiring a settlement in a town and thus becoming part of the settled population of the town. If settlement was made increasingly difficult to acquire as a matter of law, outsiders would increasingly be unable to acquire settlements in the towns to which they moved ("here") and would remain the legal responsibility of the town from which they came ("there"). Accordingly, over the course of the eighteenth century, towns brought pressure to bear upon the provincial authorities to make the settlement laws ever more stringent. As a result of their demands, the settlement laws tightened; outsiders found it harder and harder to obtain settlements.

Until the very end of the eighteenth century, the settlement laws consisted of "common law" modes of acquiring a settlement and "statutory" modes of acquiring a settlement. For roughly the first three quarters of the eighteenth century, these modes may be described as follows. Under the "common law" modes of acquiring a settlement, individuals acquired settlements on the basis of parentage, marriage, or birth.[20] Under the "statutory" modes of acquiring a settlement, an individual's uncontested

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[20]For a description of these "common law" modes of obtaining a settlement, see JONATHAN LEAVITT, A SUMMARY OF THE LAWS OF MASSACHUSETTS, RELATIVE TO THE SETTLEMENT, SUPPORT, EMPLOYMENT AND REMOVAL OF PAUPERS (Greenfield, John Denio 1810).

presence within the territory of the town constituted a basis for obtaining a settlement therein.[21] The relevant statutes had provided that an individual who resided within the territory of the town for a requisite period without being given formal notice to leave,[22] or who arrived within the territory of a town by ship from "beyond sea,"[23] automatically acquired a settlement therein.

In 1767, as a result of the economic crisis of the late 1760s and undoubtedly under pressure from the larger towns, the Massachusetts General Court passed a statute that altered both the "common law" and the "statutory" modes of settlement, thereby tightening the settlement laws considerably.[24] On the "common law" side, the statute removed birth as a basis of settlement; thus children born within the territory of a particular town to undesirable outsiders would no longer be the legal responsibility of that town, but of the town in which their parents possessed settlements.[25] On the "statutory" side, the statute removed uncontested presence as a mode of obtaining settlement; around this point, the General Court also appears to have jettisoned the principle that individuals arriving within the territory of a town by ship from "beyond sea" automatically obtained a settlement therein.[26] Thus, after the poor law revisions of 1767, it became practically impossible for outsiders—at any rate, those who were not incorporated into the town community through marriage or parentage—to obtain settlements in towns.

This trend towards tightening the settlement laws continued after the American Revolution. In response to the economic crisis of the 1780s, the

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[21]Only persons who were competent to obtain a settlement in their own right—a category that excluded married women, minors, slaves, and persons lawfully restrained—were able to obtain a settlement this way. *Id.* at 7.

[22]The length of the requisite period of uncontested residence was statutorily increased under pressure from the larger towns. Thus, in the late seventeenth century, it was set at three months. *An Act for Regulating of Townships, Choice of Town Officers and Setting Forth their Power*, ch. 28 (1692-1693), *reprinted in* 1 THE ACTS AND RESOLVES, PUBLIC AND PRIVATE, OF THE PROVINCE OF THE MASSACHUSETTS BAY, TO WHICH ARE PREFIXED THE CHARTERS OF THE PROVINCE 64 (Boston, Wright & Potter 1869-1922) [hereinafter PROVINCE LAWS]. In 1700-1701, it was extended to one year. *An Act directing the Admission of Town Inhabitants, reprinted in* 1 PROVINCE LAWS, *supra* at 451. This statutory structure continued until the late 1760s.

[23]*An Act in Addition to the Act directing the Admission of Town Inhabitants, Made and Pass[e]d in the Thirteenth Year of the Reign of King William the Third* (1722-1723), *reprinted in* 2 PROVINCE LAWS, *supra* note 22, at 244.

[24]*An Act in Addition to the Several Laws already made relating to the Removal of Poor Persons out of the Towns whereof they are not Inhabitants* (1766-1767), *reprinted in* 4 PROVINCE LAWS, *supra* note 22, at 911.

[25]*See* LEAVITT, *supra* note 20, at 21.

[26]I have been unable to identify when this principle disappeared; there is no doubt, however, that it was not adhered to in the late eighteenth century.

General Court completely revised the settlement laws in the 1780s and 1790s; the distinction between "common law" and "statutory" modes of acquiring a settlement vanished as the entire settlement law was codified.[27] As instantiated in these post-Revolutionary revisions, settlement remained extremely hard to obtain. A late nineteenth century commentator described the 1794 settlement law—the settlement law that would remain in effect throughout the entire antebellum period—as "hedg[ing] about the acquirement of a settlement with more complexities and difficulties than had characterized the earlier provincial law."[28] It should be clear by now that the object behind late eighteenth century efforts to tighten the settlement laws was to enable the town where the outsider happened to be ("here") to pin legal responsibility for the outsider's support upon the town in which he possessed a settlement ("there"). However, this object only made sense in light of a conviction that individuals moved in space from "there" to "here"; the outsider could be denied the possibility of obtaining a settlement "here" because he already possessed a settlement "there."

What was to be done with "foreigners"—those individuals from outside the state who did not already possess a settlement in a Massachusetts town and who found it difficult to acquire a settlement in a Massachusetts town under the increasingly stringent settlement laws? Precisely because the Massachusetts poor laws had no extraterritorial effect, the places from which "foreigners" came, places outside the state, could not be legally compelled to bear the costs of supporting such individuals in Massachusetts towns. Furthermore, in light of the fact that "foreigners" often needed immediate assistance by reason of illness, injury, and the like, the option of transporting them to the places from which they came in order to avoid the costs of supporting them was not a realistic one. In short, the "there" from which "foreigners" came could not effectively be made responsible for them.

During the colonial period, under a convention of long standing, the provincial government had borne the expenses of supporting "foreigners"; towns supported "foreigners" when they needed assistance and submitted

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[27] *An Act determining what Transactions shall be necessary to constitute the settlement of a Citizen in any particular Town or District* (1789), *reprinted in* ACTS AND LAWS OF THE COMMONWEALTH OF MASSACHUSETTS 408 (Boston, Wright & Potter 1894) [hereinafter ACTS AND LAWS]; *An Act ascertaining what shall constitute a legal Settlement of any Person, in any Town or District within the Commonwealth, so as to entitle him to support therein in case he becomes Poor and stands in need of relief; and for repealing all Laws heretofore made respecting such Settlement* (1793), *reprinted in* ACTS AND LAWS at 439 (1895).

[28] JOHN CUMMINGS, POOR-LAWS OF MASSACHUSETTS AND NEW YORK 34–36 (New York, Macmillan 1895).

accounts for reimbursement to the provincial authorities.[29] After the American Revolution, this convention was formalized. Following the poor law revisions of the early 1790s, town poor relief officials were legally obliged to "relieve and support, and in case of their decease, decently bury all poor persons residing or found in their towns or districts, having no lawful settlements within this Commonwealth." The Commonwealth would reimburse expenses on the basis of accounts regularly submitted to, and inspected by, the General Court's standing Committee on Accounts.[30]

From the perspective of town poor relief officials, the logic underlying the Commonwealth's assumption of legal responsibility for the support of "foreigners" might be set forth as follows. The Commonwealth assumed the legal responsibility for the support of the "foreigner" because it was "unjust" to place this responsibility upon any single town. However, in assuming this legal responsibility, the Commonwealth also actually stood in for—and thus essentially represented the "there" from which the "foreigner" came. From the perspective of town poor relief officials, to mark an individual as the legal responsibility of the Commonwealth was generally to mark him as an individual coming from some place outside the state. Correspondingly, to mark an individual as coming from some place outside the state was generally to mark him as the legal responsibility of the Commonwealth.

What did it mean to be a "foreigner" in late eighteenth century Massachusetts? As an initial matter, the fact that "foreigners" lacked a settlement in a specific Massachusetts town meant that they had neither stable claims to poor relief nor stable rights to residence. As such, they could be—and in practice were—driven from town to town. The hardships associated with lacking a settlement are apparent in the rare accounts that "foreigners" offered of themselves. For example, in January 1787, Hannah Rutherford petitioned the General Court for support in the following terms:

> The petition of Hannah Henly Alias Rutherford humbly sheweth, that your Petitioner was a Native of Ireland, & at about fourteen years of age was Stolen from my Parents & Brought over Into this Country & Sold for

[29]By common consensus of historians, the origin of the provincial government's assumption of responsibility for individuals without settlement is traced to the outbreak of King Philip's War in 1675, which produced a wave of refugees who fled their homes for more secure communities. In order to deter towns from driving these refugees away, the General Court ordered towns to administer to the needs of the refugees, assuring them that the refugees would be supplied "out of the publick Treasury." THE COLONIAL LAWS OF MASSACHUSETTS 283 (William H. Whitmore ed., Boston, Rockwell & Churchill 1887) (1672), *microformed on* Library of American Civilization 14744 (Chicago, Library Resources 1970).

[30]*An Act providing for the relief and support, employment and removal of the Poor, and for repealing all former laws made for those purposes* (1793), *reprinted in* ACTS AND LAWS, *supra* note 27, at 439 (1895).

> a Servant to One Mr. Buckingham of Rutland (for four years). Soon after I was sold to one Mr. Reed of Leicester, with whom I lived About a fortnight Before he sold me to Mr. William Scott of Palmer with whom I Lived almost two years when he sold me to Mr. Patrick Smith of Sd Palmer, with whom I served the Rest of the four years—after which time I Sojourned Whethersoever I could find a Place. Sometimes in one Town & Sometimes In another & Laboured for my Support about two years & then I was Married to one John Rutherford at Brimfield a Transient Parson [sic] with whom I lived but a Little while before he Died & Left your Petitioner a Sorrowfull Widow with Little or Nothing to Support herself with, which obliged your Petitioner to go about from town to town & Labour for her Support where any body would Set her to work, & in this way was Able to Get a Comfortable living Until about Seven years ago when I was taken with the Palsies & Quite Disanabled [sic] me from work, but being able to walk I have gone from house to house & lived on the Charity of the Good People ever since who have been very kind to me. I am now Sixty Years of Age & unable to walk about as I have done, & Not a Friend In the World to help me.

Although she had lived in Massachusetts for over forty years, Rutherford lacked a settlement in a Massachusetts town; she had spent most of her adult life wandering from town to town; no longer able to work, she could not count on the fact of being able to stay within—and be supported by—any given town community.[31]

Furthermore, although the Commonwealth explicitly assumed legal responsibility for the support of "foreigners," it made it quite clear that its responsibility was to be temporary; "foreign paupers" were to be sent back to the places from which they came. Accordingly, the Commonwealth authorized town poor relief officials to initiate removal proceedings with respect to "foreign paupers" after their immediate needs had been met. However, the difficulties associated with removing "foreign paupers"—particularly if they came from places "beyond sea"—were recognized in the very text of the law that authorized removals:

> And upon complaint of such Overseers [of the Poor], any Justice of the Peace in their county, may . . . cause such pauper to be sent and conveyed by land or water, to any other State, or to any place beyond sea, where he belongs, if the Justice things [sic] proper, if he may be conveniently removed, at the expence of the Commonwealth; *but if he*

[31] MASS. ARCHIVES, HOUSE UNPASSED LEG., SC1, Ser. 230, No. 2420 (1787).

> *cannot be so removed, he may be sent to and relieved, and employed in the house of correction, or work-house, at the public expence.*[32]

Given this explicit legal recognition of the fact that the removal of "foreign paupers" might be onerous—and the Commonwealth's explicit assurance to the towns that it would support "foreign paupers" if they could not be conveniently removed—there was little reason for town poor relief officials to go to the trouble of removing them. What little evidence of removals survives for the late eighteenth century points to a sporadic removal of "foreigners" who came from neighboring states or the British colonies to the north.[33] In other words, albeit legally removable at all times, "foreign paupers" were in practice not removed; they were suspended instead in the precarious legal state of residing in Massachusetts without "belonging" anywhere in Massachusetts.

B. *Emancipation, Poverty, and the Construction of Black Foreignness*

In eighteenth century Massachusetts, all free individuals—whether Massachusetts natives or "foreigners"—were *legally visible subjects* on the landscape of claims. As such, they were legally recognized as being capable of articulating claims upon the community. The settlement law served the function of indicating *which* governmental body was responsible for the claims of these legally visible subjects. Town poor relief officials' constant anxieties about ensuring that as few outsiders as possible obtained settlements in their towns—which drove them to push for increasingly stringent settlement laws throughout the eighteenth century—were all directed at minimizing the claims of legally visible subjects.

By contrast, slaves were *legally invisible subjects* on the landscape of claims. This invisibility was an aspect of the "social death" of slavery, which has been famously characterized as the slave's utter lack of legally recognized relationships outside of the relationship with the master.[34] Slaves' inability to have legally recognized relationships outside of their relationship with their masters meant that they could not articulate claims upon the landscape of claims in their own right. Thus, slaves were legally incapable of acquiring settlements on their own; their claims for assistance—whether

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[32] *An Act providing for the relief and support, employment and removal of the Poor, and for repealing all former laws made for those purposes* (1793), *reprinted in* ACTS AND LAWS, *supra* note 27, at 439 (1895) (emphasis added).

[33] MASS. ARCHIVES, HOUSE UNPASSED LEG., SC1, Ser. 230, No. 3316 (1790) (containing accounts of Boston which include charges for paying passage of paupers to New Hampshire, New York, Nova Scotia, and Rhode Island).

[34] ORLANDO PATTERSON, SLAVERY AND SOCIAL DEATH: A COMPARATIVE STUDY (1982).

by reason of age, illness, disability, and so on—were to be directed *only* towards their masters; their rights of residence depended *only* upon those of their masters. They were to be the responsibility *only* of their masters.

However, what was to be done with a slave whose master was truly unable to support him? The needs of an old, sick, or disabled slave whose master could support him no longer were irreducible; they could not be wished away. Only for purposes of responding to this very limited situation, slaves were assigned settlements. The rule was that slaves derived settlements from their masters; slaves' settlements changed as they were sold to different masters. When masters died intestate, slaves became the property of, and hence acquired the settlement of, the administrators of their masters' estates.[35] However, there was no question that the slave's claims upon a town based upon a settlement were to be made only as a matter of last resort, i.e., when the master could quite literally no longer keep the slave's claims invisible from the town community. Precisely because of slaves' general legal invisibility on the landscape of claims, from the perspective of town poor relief officials, the presence of slaves within the town was not an especially grave problem.

Under Massachusetts law, the slave's legal invisibility on the landscape of claims was supposed to attach to him even as he crossed the threshold from slavery to freedom. Former masters—rather than towns—were to bear the charges of supporting manumitted slaves. The ostensible object was to prevent masters from shirking their legal obligations towards their slaves by manumitting them when they became old, sick, or disabled. Accordingly, since 1703, on the ground that "great charge and inconveniences have arisen to divers towns and places, by the releasing and setting at liberty molato and negro slaves," Massachusetts had required slave-owners to provide town officials with a security in the amount of fifty pounds for each slave manumitted to save towns from charges associated with supporting manumitted slaves. In the event slave-owners failed to provide such security, the 1703 manumission act stated:

> And no Molato or Negro hereafter manumitted, shall be deemed or accounted free, for whom Security shall not be given, as aforesaid, but shall be the proper Charge of their respective Masters or Mistresses, in case they stand in need of Relief and Support, notwithstanding any Manumission or Instrument of Freedom to them made or given; and shall

[35] *See* LEAVITT, *supra* note 20, at 5.

> also be liable at all times to be put forth to Service by the Select-men of the Town.[36]

There is substantial evidence of a consciousness of, and compliance with, this law throughout the eighteenth century. Lorenzo Greene cites various instances of early eighteenth century slave-owners posting security with towns when they manumitted their slaves.[37] In a 1737 dispute over the manumission of a black man named James, the General Court ordered that James be absolutely manumitted provided "security be given . . . to indemnify the town of Boston from any charge that may arise from the Petitioner's freedom."[38] Finally, in 1760, Jonathan Sewall, one of John Adams' correspondents, asked Adams for his legal interpretation of the 1703 manumission act as it applied the following hypothetical situation:

> A man, by will, gives his negro his liberty, and leaves him a legacy. The executor consents that the negro shall be free, but refuseth to give bond to the selectmen to indemnify the town against any charge for his support, in case he should become poor, (without which, by the province law, he is not manumitted,) or to pay him the legacy.

Adams' interpretation of the act differed from that of his correspondent only insofar as he did not see it as absolutely determining the question of the manumitted slave's freedom; in his view, "the province law seems to have been made only to oblige the master to maintain his manumitted slave."[39] What was beyond dispute was that the 1703 manumission act was to maintain the manumitted slave in a condition of legal invisibility on the landscape of claims.

As might be expected, throughout the eighteenth century, there were attempts to subvert the legal regime that maintained slaves' legal invisibility on the landscape of claims. Slave-owners who wished to avoid the costs of supporting their aged slaves—and who were therefore unwilling to post the security required under the 1703 manumission act—hit upon the expedient of "selling" their slaves to indigent individuals. When such "purchasers"

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[36]*An Act Relating to Molato and Negro Slaves* (1703), *reprinted in* 1 PROVINCE LAWS, *supra* note 22, at 519. There is no suggestion here that this kind of act was in any way unique to Massachusetts; similar provisions were to be found in the other colonies. Benjamin J. Klebaner, *American Manumission Laws and the Responsibility for Supporting Slaves*, 63 VA. MAG. HIST. & BIOG. 443 (1955).

[37]LORENZO J. GREENE, THE NEGRO IN COLONIAL NEW ENGLAND: 1620-1776, at 292 (1942).

[38]HELEN T. CATTERALL, 4 JUDICIAL CASES CONCERNING AMERICAN SLAVERY AND THE NEGRO 478 (1936).

[39]GEORGE H. MOORE, NOTES ON THE HISTORY OF SLAVERY IN MASSACHUSETTS 53-54 (New York, Negro Universities Press 1866).

proved unable to support "their" slaves, as was no doubt expected to happen by all parties to the transaction, the costs of supporting the slaves were effectively shifted onto towns. A 1766 petition from the town of Uxbridge reveals quite clearly the existence of this practice:

> Humbly shews to your Exelency [sic] and Honours that ther is Living in said Town an old Negro man Named Will and an old Negro woman Named Subbinah who were of Late till about foure [sic] years ago servants to ye Reverend Mr. Nathan Webb of said Uxbridge and about that time he sold said Negros to Daniel Holbrook who after wards [sic] sold them to John Alden who then Belongd [sic] to Medway and so it is that ye said Alden is [worth] Nothing and is unable to support his uen family and is Gon [sic] of late into parts unknown to us and ye said Daniel Holbrook is since Dead and his Estate is Rendered Insolvant [sic] and ye said Negros are very old and infirmed [sic] and unable to support themselves and have no Master to take any care of them and have bene [sic] in a suffering condition for a long time and ye said town of Uxbridge hae Ben [sic] at Grate [sic] Expence in ye Necesary [sic] support of ye said Negros.

The legislative committee to which this petition was referred recognized immediately that Will and Subbinah, the slaves in question, "have been by Mr. Webb sold in such maner [sic] as to subject [Uxbridge] to considerable charge." Because the committee had uncovered similar instances of fraud, it reported a bill that would have made *all* financially sound vendors of slaves—going up the chain of successive sales—liable for slaves that became chargeable to towns. This bill, however, was never enacted into law.[40] What is important about such attempts to subvert the law, however, is precisely that they were attempts to *subvert* the law. By representing a departure from legally recognized practices, they confirmed the basic tendency of the law to direct slaves' claims for assistance towards their masters, and therefore to maintain slaves' legal invisibility on the landscape of claims.[41]

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[40]MASS. ARCHIVES, MASS. ARCHIVES COLLECTION: DOMESTIC RELATIONS, at 448–50 (Vol. IX, 1643-1774).

[41]It is hard to imagine that slaves were maintained in a condition of perfect legal invisibility on the landscape of claims as they crossed the threshold from slavery to freedom during the entire period prior to the abolition of slavery in the early 1780s, particularly given the size of the free black population in colonial Massachusetts, which has been estimated at forty percent of the total black population in 1764. WILLIAM D. PIERSEN, BLACK YANKEES: THE DEVELOPMENT OF AN AFRO-AMERICAN SUBCULTURE IN EIGHTEENTH-CENTURY NEW ENGLAND 22 (1988). However, if indeed there were problems associated with the appearance of blacks upon the landscape of claims during the colonial period—and I am convinced that there must have been some—these problems did not inform the debates surrounding the emergence of blacks as legally visible subjects of claims after the abolition of slavery. As a

The abolition of slavery in Massachusetts brought the slave's legal invisibility on the landscape of claims to an end. However, in order to appreciate the complexities underlying the destruction of slaves' legal invisibility, it is essential to possess some idea of the specificities of the abolition process in Massachusetts. Within the historiography of the late eighteenth century northern abolition of slavery, it is well established that abolition brought about the end of slavery without making any provision for the incorporation of former slaves into northern societies.[42] Not surprisingly, abolition engendered considerable ambiguities, uncertainties, and confusions about the future legal position of emancipated slaves. These ambiguities, uncertainties, and confusions were perhaps most acute in Massachusetts. In contrast to all the other northern states with significant slave populations, Massachusetts accomplished abolition not through a contentious political debate that weighed different interests and demarcated different responsibilities, but through grandiose—and highly cryptic—judicial pronouncements. In 1783, in the celebrated *Walker-Jennison Cases*, Chief Justice William Cushing of the Supreme Judicial Court declared *tout court* that, "without resorting to implication in constructing the [Massachusetts Constitution of 1780], slavery is . . . as effectively abolished as it can be by the granting of rights and privileges wholly incompatible and repugnant to its existence."[43] There was absolutely no guidance as to how former slaves were to make the transition to becoming members of the community.

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general matter, much more research needs to be done on the experience of blacks with systems of poor relief administration in colonial New England. Scholars have begun this work only recently. *See, e.g.*, Ruth Wallis Herndon, Servants of the Community: Black and Indian Children as Bound Laborers in Eighteenth-Century New England (paper presented at the American Historical Association Meeting, Chicago, IL, Jan. 9, 2000).

[42]WINTHROP D. JORDAN, WHITE OVER BLACK: AMERICAN ATTITUDES TOWARD THE NEGRO, 1550-1812, at 352–53 (1968).

[43]John D. Cushing, *The Cushing Court and the Abolition of Slavery in Massachusetts: More Notes on the "Quok Walker Case,"* 5 AM. J. LEGAL HIST. 130 (1961), *quoted in* ARTHUR ZILVERSMIT, THE FIRST EMANCIPATION: THE ABOLITION OF SLAVERY IN THE NORTH 114 (1967). Except for Massachusetts, all of the northern states with significant slave populations—Connecticut, New Jersey, New York, Pennsylvania, and Rhode Island—achieved a formal political resolution of the problem of slavery by enacting *post-nati* statutes that effected some kind of calibration between the rights and responsibilities of slave-owners with respect to their slaves, on the one hand, and the public interest in ending slavery, on the other hand. Although these *post-nati* statutes undoubtedly engendered their own problems, they at least represented a systematic, centralized and localizable political attempt to work out the difficulties associated with emancipating slaves. In Vermont, slavery was outlawed by the state's 1777 Constitution. In New Hampshire, the process of abolition was more ambiguous; although slavery appears to have been abolished through judicial interpretation of the 1783 Constitution, in 1792, there were still 150 slaves in the state; slavery was explicitly banned in the state by an act passed in 1857. *Id.* at 116–17.

The *Walker-Jennison Cases* were not hailed at the time as revolutionary decisions. They went entirely unnoticed in contemporary newspapers, and slaves continued to be advertised for sale or as runaways in newspapers after the date of the decisions. However, the *Walker-Jennison Cases*—when combined with similar cases brought around the same time—had a catalytic effect over the course of the 1780s; they convinced slaves that courts were unlikely to respect the claims of their masters; they thus encouraged slaves to sue for their freedom or simply to abscond. Under repeated assaults, the institution of slavery crumbled; when the first federal census was taken in 1790, Massachusetts reported that it had no slaves at all.[44]

As the legality of slavery itself was increasingly cast into question, slave-owners argued that they should be released from all legal responsibility for supporting slaves. Anything less—particularly in light of the strong consciousness of property rights animating revolutionary ideology—would constitute an "injustice." None other than Nathaniel Jennison, the slave-owner in the *Walker-Jennison Cases*, made this point forcefully. In a memorial protesting the outcome of the *Walker-Jennison Cases*, Jennison began by asking the General Court to "explain" the state's Constitution, i.e., to overrule the Supreme Judicial Court, but ended on the following note:

> But whatever may be the determination of this Honble Court upon the point in Question, your [Memorialist] prays that if the Servant is set free, the Master may be free too, if there is reason for the one there certainly is reason for the other, for it is nowhere to be found in Revelation, that Christians shall be bond men to the Heathen or Negroes—which is really the unhappy situation of every person that ever own'd a Negro servant—who is at liberty while the Master by Law is bound to maintain & support him in Sickness & health altho' he can have no control over him—Your [Memorialist] entreats your Honors to take the Case into your wise Consideration & if you shou'd be of opinion that they are Free by the Constitution, that you would repeal the Law which binds the Master to support them, & thus give the Master his freedom as well as the Servant—if your [Memorialist] is bound to support his Ten Negroes

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[44]*Id.* at 115. Historians have argued endlessly about the meaning and effects of the Walker-Jennison cases. *See generally* William O'Brien, S.J., *Did the Jennison Case Outlaw Slavery in Massachusetts?*, 17 WM. & MARY Q. (3D SER.) 219 (1960); John D. Cushing, *The Cushing Court and the Abolition of Slavery in Massachusetts: More Notes on the "Quock Walker Case,"* 5 AM. J. LEGAL HIST. 118 (1961); Robert M. Spector, *The Quock Walker Cases (1781-83)—Slavery, Its Abolition, and Negro Citizenship in Early Massachusetts*, 53 J. NEGRO HIST. 12 (1968); Arthur Zilversmit, *Quok Walker, Mumbet, and the Abolition of Slavery in Massachusetts*, 25 WM. & MARY Q. (3D SER.) 614 (1968); Elaine MacEacheren, *Emancipation of Slavery in Massachusetts: A Reexamination*, 1770-1790, 55 J. NEGRO HIST. 289 (1970).

> while they run about living in pleasure & Idleness, he is the most abject Man that ever existed.[45]

Jennison's petition spurred the General Court into action. At its very next session, the General Court sought to repeal the 1703 manumission act that had required slave-owners to post security with town officials when they manumitted slaves; however, for unexplained reasons, the 1703 manumission act was not repealed.[46] Notwithstanding this legislative inaction, as the legal recognition of slavery faded in Massachusetts, slave-owners simply refused to honor their legal obligations to support their former slaves.[47] As a result of slave-owners' increasingly determined refusal to support their former slaves, blacks' legal invisibility on the landscape of claims came to an end. Although they had neither left nor entered the territory of Massachusetts, with the lifting of the veil of slavery, blacks began to emerge—more or less confusedly—as legally visible subjects of claims.

If slaves had been pushed into legal visibility on the landscape of claims by their former masters' refusal to support them, as legally visible subjects, former slaves found themselves trapped within a larger structure of refusal. No governmental entity—neither the Commonwealth nor the towns—particularly wanted the legal responsibility of supporting former slaves in times of necessity. During the 1780s and 1790s, the Commonwealth and the towns squabbled bitterly with each other on the subject of legal responsibility for former slaves, with each side trying to shift the legal responsibility onto the other. This was a struggle not about recognizing the claims of newly emancipated slaves, but about managing those claims of injured, dying, aged, and infant former slaves that—within the moral economy of late eighteenth century poor relief—could not be wished away.[48]

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[45]MASS. ARCHIVES, HOUSE UNPASSED LEG., SC1, Ser. 230, No. 956 (1782) (Memorial of Nathaniel Jennison) (emphasis in original).

[46]MASS. ARCHIVES, JOURNAL OF THE HOUSE OF REP., at 436, 444 (Vol. III, May 1782-March 1783). The 1703 manumission act remained on the books until 1807. MOORE, *supra* note 39, at 54.

[47]Of course, various slave-owners continued to provide their former slaves with financial assistance, housing, and employment as the former slaves negotiated the precarious transition from slavery to freedom. However, this was most often done on the basis of the affective ties developed between master and slave. *See, e.g.*, PIERSEN, *supra* note 41, at 33; MELISH, *supra* note 15, at 99.

[48]I am conscious here of producing a somewhat reified notion of the "Commonwealth" and the "towns." Undoubtedly, there were differences *among* the towns and—in a political system based upon town representation—*within* the Commonwealth. Although one would expect the interests of towns in eastern Massachusetts (which had larger black populations) to differ from the interests of towns in western Massachusetts (which had smaller black populations), I have been unable to trace such differences with any level of accuracy.

Town poor relief officials formed the "front line," as it were, for receiving, processing, and handling the claims of injured, dying, aged, and infant former slaves. However, unlike the contemporaneous Connecticut and Rhode Island *post-nati* abolition statutes, both of which had conditioned the master's ability to manumit healthy adult slaves without subsequent financial obligation upon the prior approval of town selectmen, the *Walker-Jennison Cases*—by simply proclaiming the end of slavery—had ignored the interests of town poor relief officials entirely.[49] Not surprisingly, town poor relief officials were determined to avoid legal responsibility for the claims of individuals, many of whom had formed part of the lived community of the town, but about whose emergence as legally visible subjects they had not been consulted.

From the perspective of town poor relief officials, former slaves most resembled the "foreigners" who entered the state from the outside and levied claims upon town communities when they grew old, fell ill, or became disabled. The obvious distinction between "foreigners" and former slaves—that the former came from outside the territory of the state, while the latter had always been present within the town—was completely irrelevant. What mattered instead was the emergence of both as legally visible subjects of claims. As subjects of claims, both "foreigners" and slaves were originally legally invisible on the landscape of claims—"foreigners" because they were outside the territory of the town community, slaves because they were the sole responsibility of their masters. As subjects of claims, both "foreigners" and slaves became legally visible on the landscape of claims at a defined moment: "foreigners" when they entered the territory of the town, slaves when they ceased to be the sole responsibility of their masters. In the opinion of town poor relief officials, if the Commonwealth accepted the legal responsibility for supporting the "foreigner" who had entered the town from outside the state, it should do so equally with respect to the former slave who had entered the town from slavery.

Accordingly, after 1783, with the express aim of shifting the legal responsibility for supporting former slaves onto the Commonwealth, in petition after petition, town poor relief officials argued vociferously that slaves had never been imagined as members of town communities; that former slaves should thus not automatically be given legal settlements in towns; and that former slaves and their descendents should be deemed "foreigners." It is important to emphasize here that—because the legal concept of settlement encompassed *both* claims to support by the town *and*

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[49]For a discussion of the Connecticut and Rhode Island *post-nati* statutes, see MELISH, *supra* note 15, at 67–73.

rights of residence in the town, to argue that former slaves should not obtain settlements was to argue *both* that they should not have claims to support by the town *and* that they should not have rights of residence in the town. In other words, in addition to refusing to bear the financial burden of supporting former slaves, the towns were ultimately arguing—in stark confirmation of the intimate connection between the rise of racial ideology and the rise of freedom for blacks—for the legal authority to cleanse the space of the town of the very presence of former slaves.

In a political system based upon town representation, the towns' efforts to refuse legal responsibility for former slaves did not go unheeded. Town representatives in the General Court pressured that body to legislate on the subject of legal responsibility for poor blacks so as to shift the burden of supporting them onto the Commonwealth. Throughout the 1780s, the subject was never far from legislative consciousness. In early 1783, the House of Representatives appointed a committee to bring in a bill that would "make such provision for the support of Negros & Molattos as the Committee may find most expedient."[50] In 1785, a joint committee of both houses was appointed to consider "what measures are necessary to be taken relative to Negroes, who are now within the Commonwealth, or who may hereafter be brought or come within the same."[51] Also, in 1787, a joint committee was directed to report "a bill or bills upon the subject matter of Negroes in this Commonwealth at large."[52] However, the towns' pressures yielded no concrete results. The Commonwealth—itself daunted by the prospect of assuming the legal responsibility for supporting an expanding free black population—proved somewhat resistant to the towns' pressures. What followed was a war of shifting positions between the Commonwealth and the towns.

During the 1780s, the General Court considerably augmented the confusion surrounding the subject of legal responsibility for the support of former slaves by sending flatly contradictory signals to the towns. Without ever making the basis for its decisions explicit, the General Court agreed to accept legal responsibility for former slaves in some cases, but not in others. As a result, towns were constantly driven to represent former slaves as "foreigners" in ways that they hoped would be convincing to the legislature.

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[50]MASS. ARCHIVES, JOURNAL OF THE HOUSE OF REP., at 444, 529, 531, 537 (Vol. III, May 1782-March 1783); *see also* MASS. ARCHIVES, JOURNAL OF THE SEN., at 413 (Vol. III, May 1782-March 1783).

[51]MASS. ARCHIVES, JOURNAL OF THE HOUSE OF REP., at 222, 342 (Vol. V, May 1784-March 1785); *see also* MASS. ARCHIVES, JOURNAL OF THE SEN., at 248, 351 (Vol. V, May 1784-March 1785).

[52]MASS. ARCHIVES, JOURNAL OF THE HOUSE OF REP., at 88 (Vol. VIII, May 1787-April 1788); *see also* MASS. ARCHIVES, JOURNAL OF THE SEN., at 81 (Vol. VIII, May 1787-April 1788).

Nevertheless, the trend was towards rejecting town petitions calling for the Commonwealth to support former slaves.

The first town petition calling for the Commonwealth to support a former slave since Massachusetts started keeping systematic records of its poor relief disbursements dates to February 1787. Charles Adams had been born a slave in Roxbury, had been repeatedly sold, and had obtained his freedom by serving in the Revolutionary War. In June 1786, while "strolling about the country with his wife and children," Adams had fallen ill in the town of Walpole. The town had arranged for medical attention to be provided him; Adams had died a month later. Arguing that Adams "did not properly belong to any Town in this Commonwealth," the Selectmen of Walpole petitioned the Commonwealth to be reimbursed for expenses they had incurred on Adams' behalf. The General Court's standing Committee on Accounts, which reviewed all town accounts for the support of "foreigners," granted the petition.[53] In other words, the Commonwealth adopted the view that Adams did not possess a legal settlement in any town in Massachusetts, and thus that he was a "foreigner" for purposes of poor relief.

At least within certain legislative quarters, this position must have been controversial. Barely a year after signaling a willingness to accept the legal responsibility for former slaves, the entire General Court, i.e., not just the Committee on Accounts, focused upon the issue of town requests to shift legal responsibility for former slaves onto the Commonwealth. At issue were two petitions from the towns of Westminster and Dorchester. Dated March 20, 1788, the petition from the Selectmen of Westminster is reproduced here at length because it reveals the utter confusion surrounding the subject of where former slaves "belonged" for purposes of poor relief.

> Ishmael Thomas, a Negro, formerly belonging to [Col.] Benjamin Symonds of Williamstown, by an Agreement with his Master served three years, as a Soldier, in the american Army to purchase his Freedom. After the Expiration of the Term he resided some years at Dorchester & then removed to this Town with a Wife & Family. He lived in sd Williamstown when it was incorporated, was in the Army when the Constitution of this State, which is said to emancipate Slaves and abolish Slavery, took place. In the former War he was wounded & the Bullet still remains in his Leg . . . , which together with the Infirmities of age, being about sixty years old, have rendered him unable to acquire a Support by Labor, & reduced him & his Family, a Wife and two Children, to such indigence, that for eighteen Months or more, they have been a Town Charge. Formerly the law obliged masters to maintain their Negro Slaves

[53]MASS. ARCHIVES, MASS. GEN. CT. COMM. ON ACCOUNTS, ACCOUNT ROLL SUBMISSIONS, 1786-1850, Roll No. 3 (Mar. 7, 1787), Pauper Accounts (Selectmen of Walpole).

> notwithstanding any Manumission they might obtain. If the Constitution emancipates Slaves it may also repeal that Law and place the Poor of every Complexion on the Same Basis. It is supposed that a Slave, being the property of his Master, cannot gain an Inhabitancy during the period of his slavery, so as to charge the Town where he resided in Case of Indigence. And when by Virtue of the Constitution he is said to emerge from Slavery & take Rank with Citizens & Freemen, he was in the Army and not resident in the State. And whether Birth or Term of Residence are necessary to create Inhabitancy, so as to charge the Town with Maintenance, we have not the means of Information. Since the Constitution which is thought to give a general Reliefe [sic] to Negros was established, we know of no Act of the general Court providing for their Support in terms of indigence and Want.
>
> His Time was spent at Williamstown, while capable of Labor, in the Service of Said Symonds; And we think it an unreasonable Burden on this Town to be obliged to Support him in Sickness & old age, and it might be still more expensive to institute an action at Law for Compensation or Relief. The Case being new would be intricate expensive and lengthy. The Law uncertain, as no legal Provision has been made to direct the Process & terminate the Suit.
>
> Your petitioners therefore humbly pray that your Honors . . . would take the subject into Consideration and exempt us from the charge of supporting the said Ishmael & his family, or take such order on the Matter as may afford us all reasonable Relief.[54]

The contemporaneous petition from the Selectmen of Dorchester was more explicit in assimilating former slaves to the legal status of "foreigners." On the subject of the support of Scipio, "a poor Negro Man who was formerly imported into the Town of Boston from some parts of Africa" and who had lived as a slave in various towns in the state, the Selectmen of Dorchester stated bluntly that they presumed "that the sd Negro Man ought to be provided for in the same Manner as the humane Laws of this Commonwealth direct for the Relief of unfortunate Foreigners when in distress."[55] A joint committee appointed to look into the issues raised by these two petitions recommended the preparation of "a Bill to determine by whom those Negroes who are indigent & unable to support themselves, & who

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[54] MASS. ARCHIVES, SENATE UNPASSED LEG., SC1, Ser. 231, No. 884/2 (1788) (Petition of Town of Westminster) (emphasis added). The Selectmen of Westminster revealed their lack of understanding of the settlement law when they wondered whether "Birth or Term of Residence" were necessary to create settlement; after 1767, neither birth nor residence was sufficient to give outsiders settlement. *See* LEAVITT, *supra* note 20.

[55] MASS. ARCHIVES, SENATE UNPASSED LEG., SC1, Ser. 231, No. 884 (1788) (Petition of Certain Inhabitants of Dorchester Relative to a Poor Negro in the Town).

were holden in servitude before the present constitution took place shall be supported."[56] There is no evidence that such a bill was prepared, circulated and debated. Furthermore, both petitions may have been rejected; the approved state pauper accounts for the relevant years do not mention any appropriations for the support of either Ishmael Thomas or Scipio.[57]

Thereafter, until the mid-1790s, as town petitions continued to be presented, the General Court wrestled every single year with the question of legal responsibility for the support of former slaves.[58] Increasingly, the Commonwealth made it known that it was reluctant to accept the legal responsibility for the support of indigent former slaves. Unfortunately, town interests managed to defeat all concerted legislative attempts to shift the legal responsibility for supporting former slaves onto the towns. For example, in 1792, a bill entitled "An Act respecting the poor among Indians and Negroes" would have given all former slaves the opportunity to acquire legal settlements in the towns in which their masters had legal settlements as of April 19, 1775; all former slaves sixty years old or older as of April 19, 1775 would, however, be made the legal responsibility of their masters. Not surprisingly, because this solution would have placed the burden entirely on the towns and former slave-owners, it was never proposed again.[59]

More significant for present purposes, the Commonwealth gradually revealed itself to be unwilling to accept the towns' characterization of former slaves as "foreigners" on the simple ground that they were former slaves. In particular, it is possible to infer from town strategies the emergence on the part of the Commonwealth of a sense that a former slave's birth in Massachusetts vitiated a town's argument to have such a former slave classified as a "foreigner." Unfortunately, the existing record does not permit one to specify the precise legal connection imagined to exist between a former slave's birth in Massachusetts and his settlement in Massachusetts. It is very likely the case that, because settlement was originally intended to

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[56] MASS. ARCHIVES, JOURNAL OF THE HOUSE OF REP., at 88 (Vol. IX, May 1788-Feb 1789).

[57] However, a certain Scipio appears as a state charge several years later. MASS. ARCHIVES, MASS. GEN. CT. COMM. ON ACCOUNTS, ACCOUNT ROLL SUBMISSIONS, 1786-1850, Roll No. 31 (February 26, 1795), Pauper Accounts (Town of Dorchester).

[58] MASS. ARCHIVES, JOURNAL OF THE HOUSE OF REP., at 230 (Vol. X, May 1789-Mar. 1790); MASS. ARCHIVES, JOURNAL OF THE HOUSE OF REP., at 192 (Vol. XI, May 1790-Mar. 1791); MASS. ARCHIVES, JOURNAL OF THE HOUSE OF REP., at 140 (Vol. XII, May 1791-Mar. 1792); MASS. ARCHIVES, JOURNAL OF THE HOUSE OF REP., at 48 (Vol. XIII, May 1792-Mar. 1793).

[59] MASS. ARCHIVES, SENATE UNPASSED LEG., SC1, Ser. 231, No. 1582 (1792) (Rejected 1792—Act for the Support of Negroes). In this regard, it is worth pointing out that, although the bill encompasses both Indians and Negroes—thereby testifying to a certain racialization of the construction of the poor—the logic with regard to Native Americans is entirely different from the logic with regard to African-Americans.

distribute the existing population among various towns for purposes of poor relief, there was a sense that at least Massachusetts-born slaves should have a settlement *somewhere* in Massachusetts, although the town of settlement itself remained to be designated. Of course, the existence of a possible legal connection between a former slave's birth in Massachusetts and his settlement in Massachusetts is complicated by the fact that the slave's settlement traditionally followed that of his master and did not depend in any instance upon his birthplace.[60] Nevertheless, the sense of a legal connection between a former slave's birth in Massachusetts and his settlement in Massachusetts may be inferred from the fact that town poor relief officials increasingly began to represent former slaves who were not Massachusetts-born as "foreigners" on the ground that they were from "Africa."

It is worth exploring the logic behind the efforts to pin "Africa" onto these former slaves. At the outset, and as a general matter, it should be pointed out that references to slaves' origins in places vaguely referred to as "Africa," "Guinea," the "Gold Coast," and so on were common in New England newspaper advertisements throughout the eighteenth century not only because of the allegedly superior physical attributes of certain kinds of "African" slaves, but also because the West Indies—where most of these slaves may "in fact" have come from—were regarded simply as a way station in the transatlantic trade rather than as a source of origin.[61] By the end of the eighteenth century, references to former slaves' origins in "Africa" were being circulated in a variety of overlapping, mutually constitutive, discursive registers that included, but were not restricted to (1) calls on both sides of the Atlantic to repatriate free blacks to Africa, (2) the construction of a post-Revolutionary national identity that was imagined as

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[60]Furthermore, if there was a sense that newly emancipated slaves were Massachusetts citizens and should have settlements in Massachusetts *as Massachusetts citizens*, it is difficult to see why birthplace should have mattered in light of the fact that newly emancipated slaves appear to have been considered—at least by Jeremy Belknap—as Massachusetts citizens in both the "external" sense (in terms of the distinction between "citizen" and "alien") and the "internal" sense (in terms of being able to exercise political rights) regardless of birthplace. *See Queries Respecting the Slavery and Emancipation of Negroes in Massachusetts, Proposed by the Hon. Judge Tucker of Virginia, and Answered by the Rev. Dr. Belknap, in* 4 COLLECTIONS OF THE MASSACHUSETTS HISTORICAL SOCIETY FOR THE YEAR M,DCC,XCV 208 (Ser. III) (1795). Of course, the very fact that attempts were being made at the same time to assimilate blacks to the legal status of "foreigners" within the register of settlement law must undoubtedly have complicated the question of blacks' citizenship, and cast doubts upon it. Accordingly, Belknap reports that "[s]ome gentlemen, whom I have consulted, are of opinion that [blacks] cannot elect, nor be elected, to the offices of government." *Id.*

[61]PIERSEN, *supra* note 41, at 6–7.

European and white, and (3) free blacks' own attempts to construct a positive identity for themselves in the face of vicious systemic racism.[62]

However, in the hands of town poor relief officials, the reference to former slaves' origins in "Africa" had entirely different and quite specific uses, and it is these uses of "Africa" that are of interest here. Clearly, while such individuals had been slaves, it had not particularly mattered to town poor relief officials that they were from "Africa"; their legal invisibility on the landscape of claims had made the question of their origins entirely irrelevant. However, once these individuals had emerged as legally visible subjects—and after the Commonwealth had indicated its unwillingness to accept legal responsibility for them *as* former slaves—the fact that they were from "Africa" came to acquire a certain valence. This valence had to do with the fact that the Massachusetts poor laws rested upon a sense that individuals moved in space from "there" to "here," and relied upon the fact of that spatial movement to determine the locus of legal responsibility for the support of individuals. If town poor relief officials were to persuade the Commonwealth that certain former slaves were its legal responsibility as "foreigners," they had to show that these former slaves—exactly like other "foreigners" who entered Massachusetts from Great Britain, Ireland, New York, Virginia, and so on—came from an actually existing territorial entity outside the state; "Africa" was pressed into service to make this point. Once former slaves were shown to have come from "Africa," town poor relief officials could argue that the Commonwealth should bear the burden of supporting former slaves on the ground that—because "Africa" was "really" responsible for them—it would be unfair to place the burden of supporting them on any single town. Thus, town poor relief officials' invocation of "Africa" was the pure *effect* of a prior refusal to accept legal responsibility for former slaves. Of course, in light of the fact that scholars have estimated that only about one-third of New England's adult black population was foreign-born at the time of the American Revolution—a proportion that was even lower for New England's general black population—one might well wonder whether town poor relief officials did not pin origins in "Africa" onto former slaves regardless of birthplace.[63]

Already, during the late 1780s, towns had begun to deploy the fact that certain former slaves had come from "Africa" with the aim of shifting legal responsibility for their support onto the Commonwealth. This deployment of such former slaves' geographic origins in "Africa" is clearly revealed in the 1789 petition of the Selectmen of Grafton:

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[62] *See generally* LAMIN SANNEH, ABOLITIONISTS ABROAD: AMERICAN BLACKS AND THE MAKING OF MODERN WEST AFRICA (1999).

[63] PIERSEN, *supra* note 41, at 18.

> The Petition of the Select men of the Town of Grafton Humbly Sheweth that one George Geyer a Negro Man that Obtained his freedom by Going into the War in the year 1759 where he froze his feet in such a manner that all his toes came quite off and by Reason of hardship caused Ulcerous Sores on his Legs by Reason of which the General Court was Graciously Pleased to give him a Pention of forty shillings a year to which with his Industry he Maintained himself till about the first of January 1786 at which time by Reason of Old Age and his former Lameness became Quite helpless and unable to do anything towards supporting himself. The Selectmen of the town of Grafton thought it not Right that any of the human Species should suffer took Pity on him and have supported him Ever since that time *the above said George was a native of Africa therefore your Petitioners Humbly Conceive that no one Town Ought to maintain him more then Another therefore your Petitioners Humbly Request that the [General Court] would take it under their wise consideration and allow the Town of Grafton the sum that they have Already Expended for his support.*[64]

In this rendering, Geyer's years of slavery, military service, and residence as a free man in Massachusetts were erased and rendered completely irrelevant with regard to the question of his "belonging" to any particular town. What mattered from the perspective of legal responsibility for Geyer's support was the fact that he was "a native of Africa."

The invocation of "Africa" continued in the early 1790s. Increasingly, town petitions referred to the fact of former slaves' birth in "Africa"; birth in "Africa" established that the former slaves in question had in fact entered Massachusetts from the outside. For example, in 1793, the Selectmen of Franklin petitioned the General Court to reimburse them for the care of a former slave. It asked that the General Court "would pass such orders as that the Town of Franklin may not be burdened with the maintenance of this Pauper *who is an African born* but that he may be supported at the publick expense."[65] In 1794, the town of Camington petitioned to be reimbursed for the care of "Zilpah *an African born* woman [who] was brought to Boston when she was about 7 years old [and] has since been owned by sundry

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[64]Grafton, Mass., Selectmen: MSD Petitioning Mass. General Court to Increase Pension to George Geyer, Ms. Am. 1542 (Boston Public Library, Rare Books and Manuscripts) (emphasis added). The General Court had earlier granted the town of Grafton £30 as Geyer's pension. *Resolve Granting £30 to the Selectmen of Grafton for the Subsistence of George Gire, a Negro, in Full of his Pension for Two Years, reprinted in* THE ACTS AND RESOLVES, PUBLIC AND PRIVATE, OF THE PROVINCE OF THE MASSACHUSETTS BAY: TO WHICH ARE PREFIXED THE CHARTERS OF THE PROVINCE, WITH HISTORICAL AND EXPLANATORY NOTES, AND AN APPENDIX, RESOLVES—1779-1780, ch. 867, at 401 (Mar. 25, 1780) (Boston, Wright & Potter 1869-1922).

[65]MASS. ARCHIVES, SENATE UNPASSED LEG., SC1, Ser. 231, No. 1888 (1793) (Petition of Selectmen of Franklin) (emphasis added).

persons in the Counties of Suffolk Plymouth and Bristol;" town officials prayed to be relieved "from the burthen which they think ought to be borne by the Commonwealth."[66]

The towns' invocations of certain former slaves' birth in "Africa" to establish their "foreignness" enjoyed a brief success within the legislature. In early 1793, evidently deluged by town claims for reimbursement, the Committee on Accounts formally requested directions from the General Court: "Accounts from Several Towns in the Commonwealth, have been presented to them for expenses of supporting Indians, Mulattoes & Negroes—and as your Committee, are in doubt about admitting all Such Persons who become poor, to be at the charge of the Commonwealth, they pray the order of [the] Court for this government in all such cases."[67] In March 1793, the committee appointed to respond to the Committee on Account's concerns developed a draft resolve. According to this resolve, legal responsibility for the support of former slaves would be divided between the Commonwealth and the towns. The Commonwealth would support former slaves born outside Massachusetts; the towns would support former slaves born in Massachusetts, with the town in which a slave had been born designated as the town of that slave's settlement.[68] However, the resolve failed to pass, and the issue remained undecided.[69]

With the failure of this resolve, it was becoming increasingly clear to town poor relief officials that the General Court was simply unwilling to

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[66]MASS. ARCHIVES, SENATE UNPASSED LEG., SC1, Ser. 231, No. 1893 (1794) (Petition of Inhabitants of Camington) (emphasis added).

[67]MASS. ARCHIVES, HOUSE UNPASSED LEG., SC1, Ser. 230, No. 3859 (1793) (Memorial of the Committee on Accounts).

[68]MASS. ARCHIVES, HOUSE UNPASSED LEG., SC1, Ser. 230, No. 3890 (1793) (Report of the Committee on the Subject of the State Poor); MASS. ARCHIVES, HOUSE UNPASSED LEG., SC1, Ser. 230, No. 4010 (1793) (Draft Resolve). There was also a bill circulated at this time on the subject of legal responsibility for indigent former slaves. *Proceedings of the Legislature of Massachusetts*, MASSACHUSETTS SPY, Mar. 21, 1793, at 2 (reporting that "Bill determining Indians, Negroes and Mulattoes, who are objects of charity, to be the poor of this Commonwealth" was read on March 8, 1793).

[69]In February 1794, the House of Representatives appointed a committee "to bring in a Bill for the purpose of providing for support of . . . poor indians, negroes & mulattoes." MASS. ARCHIVES, JOURNAL OF THE HOUSE OF REP., at 352 (Vol. XIV, May 1793-Feb. 1794). The committee instead "reported a Resolve for direction to the Committee on Accounts." *Id.* at 389. For a text of the resolve, see MASS. ARCHIVES, SENATE UNPASSED LEG., SC1, Ser. 231, No. 1907 (1794) (Resolve respecting Inhabitancy of Negroes).

In January 1795, the House of Representatives appointed another committee "to consider whether it is necessary to make any further provision for the support of indigent negroes." MASS. ARCHIVES, JOURNAL OF THE HOUSE OF REP., at 196 (Vol. XV, May 1794-Mar. 1795). A few days later, "sundry questions from the Committee on Accounts respecting the accounts for support of negroes" required the appointment of yet another committee. *Id.* at 250.

accept legal responsibility for supporting former slaves, regardless of whether they were from "Africa." This realization produced another twist in the struggle over legal responsibility for former slaves. Increasingly, in their accounts for reimbursement from the Commonwealth, towns began to suppress the fact that black paupers were former Massachusetts slaves, and to describe them solely in terms of their race and/or geographic origins in "Africa." The object of doing so was to blur the distinction between, on the one hand, indigent former Massachusetts slaves and, on the other hand, indigent black migrants who had entered the state from the outside. Under the existing settlement laws, the Commonwealth was legally bound to reimburse towns for expenses incurred on the relief of all *bona fide* "foreigners"—including black "foreigners"—who had entered the state as migrants, failed to obtain a settlement in one of the towns, and then required assistance.[70] Therefore, if towns could surreptitiously pass off indigent former Massachusetts slaves as black migrants into Massachusetts, they could successfully shift the costs of supporting them onto the Commonwealth, thus making them *de facto* "foreigners."[71]

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[70]The Commonwealth regularly supported black "foreigners." *See, e.g.*, MASS. ARCHIVES, MASS. GEN. CT. COMM. ON ACCOUNTS, ACCOUNT ROLL SUBMISSIONS, 1786-1850, Roll No. 6 (May 3, 1787), Pauper Accounts (Overseers of the Poor of the Town of Andover) (describing pauper in question as "a transient Negro fellow Named David who was taken sick and died in this Town & said to belong to Albany in the State of New York"); MASS. ARCHIVES, SENATE UNPASSED LEG., SC1, Ser. 231, No. 1890 (1794) (Petition of Deerfield).

[71]By representing indigent former Massachusetts slaves as black migrants, quite in addition to seeking to shift the costs of their support onto the Commonwealth, the towns were effectively assimilating former Massachusetts slaves into an energetically detested group, namely black migrants in Massachusetts. Black migrants were not welcome in late eighteenth century Massachusetts. On March 1, 1786, the General Court appointed a joint committee of both houses "to consider of & report measures necessary to be taken for preventing Negroes from coming into this Commonwealth from other States." MASS. ARCHIVES, JOURNAL OF THE HOUSE OF REP., at 463 (Vol. VI, May 1785-Mar. 1786); *see also* MASS. ARCHIVES, JOURNAL OF THE SEN., at 365 (Vol. VI, May 1785-Mar. 1786). On April 30, 1787, the General Court appointed another joint committee to consider the same subject. MASS. ARCHIVES, JOURNAL OF THE HOUSE OF REP., at 524 (Vol. VII, May 1786-May 1787).

The result of these legislative deliberations was the infamous provision stating that "no person being an African or negroe, other than a subject of the Emperor of Morocco, or a citizen of some one of the United States; to be evidenced by a certificate from the Secretary of the State of which he shall be a citizen, shall tarry within this Commonwealth, for a longer time than two months." *An Act for Suppressing and Punishing of Rogues, Vagabonds, Common Beggars, and Other Idle, Disorderly and Lewd Persons, reprinted in* ACTS AND LAWS OF THE COMMONWEALTH OF MASSACHUSETTS: 1786-1787, ch. XXI, at 682 (Boston, Wright & Potter 1893). The act further provided that all blacks covered under it could be ordered to depart from the state, failing which they could be committed to the county house of correction "there to be kept to hard labour agreeable to the rules and orders of the said house." *Id.* Clearly, few black migrants—whether because they were fugitive slaves or disenfranchised free blacks—could obtain certificates from their states of origin that they

Of course, the strategy relied heavily on the two interrelated rhetorical ploys for representing black paupers to the Commonwealth—the simple invocation of race and the simple invocation of geographic origins in "Africa," with the former serving as a proxy for the latter. Unlike the descriptions of white paupers, which tended to consist of fairly elaborate narratives containing information as to the pauper's name, marital status, date of arrival in Massachusetts, the various towns lived in and so on (all of these facts going to show that the pauper had not obtained a settlement in a Massachusetts town), the descriptions of black paupers tended to be as sparse as possible, consisting *only* of designations of racial and/or geographic origins in "Africa." While this thinness of description might be attributed to the various "gulfs" separating white town poor relief officials from black paupers—not to mention the fact that blacks very likely actively resisted town poor relief officials' attempts to compel them to produce accounts of themselves—it served the very valuable function of simply preventing the Committee on Accounts from telling the difference between a former Massachusetts slave and a black migrant.

Beginning in the late 1780s, it was quite common for town accounts for reimbursement to describe black paupers *only* in terms of their race and/or geographic origins in "Africa." The following descriptions of black paupers are typical: "a Black man named James,"[72] "a black child,"[73] "Phebe a Negro Woman,"[74] "a Negro family five in number Transient persons 14 Days and Extra trouble,"[75] "Negro Charlotte,"[76] and so on.[77] Such descriptions went along with explicit invocations of black paupers' geographic origins in "Africa." For example, in February 1792, the Town of Medfield asked to be reimbursed for supporting "Worrick Green (an affrican Born) Being Sick

were citizens thereof. Boston authorities relied upon this provision to order out large numbers of blacks at a time of anxiety following Gabriel's Rebellion in Virginia. *Notice to Blacks*, MASSACHUSETTS MERCURY, Sept. 16, 1800.

[72] MASS. ARCHIVES, MASS. GEN. CT. COMM. ON ACCOUNTS, ACCOUNT ROLL SUBMISSIONS, 1786-1850, Roll No. 9 (Nov. 14, 1787), Pauper Accounts (Selectmen of Newburyport).

[73] MASS. ARCHIVES, MASS. GEN. CT. COMM. ON ACCOUNTS, ACCOUNT ROLL SUBMISSIONS, 1786-1850, Roll No. 16 (Mar. 4, 1790), Pauper Accounts (Town of Roxbury).

[74] MASS. ARCHIVES, MASS. GEN. CT. COMM. ON ACCOUNTS, ACCOUNT ROLL SUBMISSIONS, 1786-1850, Roll No. 16 (Mar. 4, 1790), Pauper Accounts (Town of Salem).

[75] MASS. ARCHIVES, MASS. GEN. CT. COMM. ON ACCOUNTS, ACCOUNT ROLL SUBMISSIONS, 1786-1850, Roll No. 18 (June 25, 1790), Pauper Accounts (Town of Waltham).

[76] MASS. ARCHIVES, MASS. GEN. CT. COMM. ON ACCOUNTS, ACCOUNT ROLL SUBMISSIONS, 1786-1850, Roll No. 21 (Feb. 24, 1792), Pauper Accounts (Samuel Curtis & Jesse Houghton).

[77] Of course, there was the occasional detailed narrative. MASS. ARCHIVES, MASS. GEN. CT. COMM. ON ACCOUNTS, ACCOUNT ROLL SUBMISSIONS, 1786-1850, Roll No. 19 (Mar. 11, 1791), Pauper Accounts (Town of Topsfield).

and family Consisting of a wife and three small Children."[78] In January 1795, the Town of Barre asked to be reimbursed for supporting "Sara Simones & Her Child In Sickness, She Being an African & born in that Countrey and a [transient person] in this State & Commonwealth."[79] In May 1795, the Town of Westport asked to be reimbursed for supporting "Dinah White a Native of Africa, and poor."[80] Such descriptions in terms of race and invocations of "Africa" could be multiplied. All were accompanied by the standard, entirely formulaic certification that the paupers in question did not possess a legal settlement in any town in the Commonwealth, that they were unable to maintain themselves, and that they were therefore the legal responsibility of the Commonwealth. Precisely because these descriptions of black paupers were restricted to race and/or geographic origins in "Africa," making absolutely no mention of their possible history of slavery in Massachusetts, the distinction between black paupers who were former Massachusetts slaves and those who were *bona fide* "foreigners" was effectively blurred.

In this regard, it is important to emphasize that race operated as a proxy for geographic origins in "Africa" and served to produce the legal "foreignness" of black paupers every bit as effectively as a direct invocation of their geographic origins in "Africa." This might be observed by juxtaposing two different sets of town accounts for reimbursement, the former referring to black paupers' geographic origins in "Africa" and the latter referring to black paupers' race as a proxy for their geographic origins in "Africa."

The first example is the Town of Marblehead's accounts of 1792. Marblehead organized information about those it alleged to be state charges into a table with information organized under the following columns: "Names," "What Time they Were [Received in the Work House]," "Age," "When died or discharged," "were Born," "time they were in the [work] house" and "Blacks or Whites." From the perspective of the Commonwealth—which would be reviewing the table to verify whether the individuals were in fact "foreigners" and had not acquired a settlement in Marblehead—the crucial column was obviously the "Were [sic] Born" column. Information provided under this column indicated that paupers had originally come from outside Massachusetts and functioned as a short form of indicating their lack of settlement. In this regard, while white paupers

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[78]MASS. ARCHIVES, MASS. GEN. CT. COMM. ON ACCOUNTS, ACCOUNT ROLL SUBMISSIONS, 1786-1850, Roll No. 22 (Mar. 9, 1792), Pauper Accounts (Town of Medfield).

[79]MASS. ARCHIVES, MASS. GEN. CT. COMM. ON ACCOUNTS, ACCOUNT ROLL SUBMISSIONS, 1786-1850, Roll No. 31 (Feb. 26, 1795), Pauper Accounts (Town of Barre).

[80]MASS. ARCHIVES, MASS. GEN. CT. COMM. ON ACCOUNTS, ACCOUNT ROLL SUBMISSIONS, 1786-1850, Roll No. 33 (Feb. 26, 1796), Pauper Accounts (Town of Westport).

were listed in terms of the foreign countries from which they came—"Jersey," "France," and "Hallifax"—the sole "African," Jack Doliber, was listed as being born in "Guinea." In other words, by describing Jack Doliber through an invocation of his birth in a place called "Guinea," Marblehead was able to erase his possible history of slavery in Massachusetts (he may or may not have been a former Massachusetts slave), represent him as a "foreigner," and thus as a state charge.[81]

The second example is the Town of Boston's accounts for the period from May 31, 1795 to December 1, 1795. Boston also organized information about those it alleged to be state charges into a table with information organized under the following columns: "Names," "where Born," duration of stay in the almshouse, "Price pr Week," "Supplies of Cloathing &c.," and total amounts. Once again, from the perspective of the Commonwealth, the "where Born" column was the crucial one because it served to indicate the pauper's lack of settlement in Massachusetts. However, while white paupers were listed in terms of the countries or states they came from—"Ireland," "Nova Scotia," "England," "Holland," "Scotland," "Germany," "Prussia," "New York," "North Carolina," "Virginia," and so on—black paupers were listed under the "where Born" column as "Negro" or "Molato." In this bizarre formulation, in response to the question "Where Born?," the black pauper's answer would be "Negro." "Negro" was the place from which black paupers came. Marking black paupers as "foreigners" on the ground that they were black points to the way in which race stood in for place.[82]

The ever vigilant Committee on Accounts appears to have been acutely aware that towns were using flattened descriptions of black paupers in terms of race and/or geographic origins in "Africa" to pass off indigent former Massachusetts slaves as "foreign paupers." In the early 1790s, the Committee on Accounts began to disallow certain claims for black paupers alleged to be "foreigners." For example, in January 1792, the Selectmen of Andover asked to be reimbursed for supporting three paupers, "Margaret Plunket Native of Ireland being poor and unable to support her self," "John Dulap a Native of Ireland being a poor Cripel [sic] and not able to Labour," and finally "Primus Freeman a native of Ginne [sic] who is not abel [sic] to Labour." Very likely because Primus Freeman was suspected of being a former Massachusetts slave, the Committee on Accounts allowed the first

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[81] MASS. ARCHIVES, HOUSE UNPASSED LEG., SC1, Ser. 230, 1792, 3740 (Miscellaneous).

[82] MASS. ARCHIVES, MASS. GEN. CT. COMM. ON ACCOUNTS, ACCOUNT ROLL SUBMISSIONS, 1786-1850, Roll No. 33 (Feb. 26, 1796), Pauper Accounts (Town of Boston). For similar Boston accounts, see MASS. ARCHIVES, MASS. GEN. CT. COMM. ON ACCOUNTS, ACCOUNT ROLL SUBMISSIONS, 1786-1850, Roll No. 34 (June 17, 1796), Pauper Accounts (Town of Boston).

two claims, but disallowed the third.[83] Similarly, in May 1794, the Selectmen of Gloucester included a charge for "Negro Cornelius wife & children" in their accounts for reimbursement; the Committee's notation on the accounts states clearly that the charge for "Negro Cornelius" was to be disallowed as a "Negro overcharge."[84] By the mid-1790s, in what is obviously an administrative attempt to ferret out all suspicious claims with respect to black paupers, the accounts of towns that did not specify paupers by race are quite literally crawling with notations against individual accounts that mark them as "negroe" accounts.[85]

Unfortunately for the towns, their efforts to refuse legal responsibility for supporting former slaves eventually failed. Like the question of the legality of slavery itself, the question of the legal responsibility for supporting indigent former slaves was ultimately resolved by transposing it from the realm of the "political" into the realm of the "legal." In 1795, in the case of *Shelburne v. Greenfield*, the Supreme Judicial Court declared the support of former slaves—regardless of their birthplace—to be the legal responsibility of towns, rather than the Commonwealth. At issue was the question of the legal settlement of a black family, consisting of a couple, Romulus and Rosanna, and their four children, then living in the town of Shelburne. Alleging that the family had become a charge to the town and that it was legally settled in the town of Greenfield, the Selectmen of Shelburne had sued Greenfield for reimbursement of expenses incurred on supporting the family and prayed for an order removing the family to Greenfield. According to the jury's findings, since 1753, Romulus and Rosanna had been the slaves of a man legally settled in Greenfield; they had obtained their freedom in 1776; and they had lived ever since—with a single

[83] MASS. ARCHIVES, MASS. GEN. CT. COMM. ON ACCOUNTS, ACCOUNT ROLL SUBMISSIONS, 1786-1850, Roll No. 22 (Mar. 9, 1792), Pauper Accounts (Town of Andover).

[84] MASS. ARCHIVES, MASS. GEN. CT. COMM. ON ACCOUNTS, ACCOUNT ROLL SUBMISSIONS, 1786-1850, Roll No. 30 (Feb. 26, 1795), Pauper Accounts (Town of Gloucester); *see also* MASS. ARCHIVES, MASS. GEN. CT. COMM. ON ACCOUNTS, ACCOUNT ROLL SUBMISSIONS, 1786-1850, Roll No. 31 (Feb. 26, 1795), Pauper Accounts (Town of Newbury).

[85] *See, e.g.*, MASS. ARCHIVES, MASS. GEN. CT. COMM. ON ACCOUNTS, ACCOUNT ROLL SUBMISSIONS, 1786-1850, Roll No. 31 (Feb. 26, 1795), Pauper Accounts (Town of Worcester). The growing oversight of claims in respect of black paupers might very well have resulted in an administrative directive that towns specify which of their pauper accounts involved blacks. In other words, if certain towns' designation of paupers only in terms of their race had initially permitted them to pass off indigent former Massachusetts slaves as "foreigners," that practice in turn spurred the Commonwealth to require racial designations of all paupers from other towns so that it might better stamp out instances of corruption. This might be one reason why the Boston state pauper accounts, which were by far the largest in the state, suddenly began to mark black paupers in terms of their race for the first time in the mid-1790s. *See* MASS. ARCHIVES, MASS. GEN. CT. COMM. ON ACCOUNTS, ACCOUNT ROLL SUBMISSIONS, 1786-1850, Roll No. 31 (Feb. 26, 1795), Pauper Accounts (Town of Boston).

brief interlude—in Shelburne, where they had married and where their children had been born.[86] Greenfield denied that Romulus and Rosanna possessed legal settlements therein. Its arguments were as follows:

> [T]hat the law of the late province did not rank the Africans with the white people; they could not, whilst they were the property of others, be capable of holding property as their own; that their polls were not taxable as those of white people; they were not liable to train, labour in mending the highways, or to perform any other civil duty; that they could not be removed or warned out of a town, by the selectmen, because they were but the chattel of another; and therefore, that as they were not contemplated in the laws, as persons capable of gaining a settlement, that they must come within the description of persons, who were found within the state, without any place of settlement, and were the proper charge of the commonwealth.

Greenfield was submitting that former slaves should not be deemed to have obtained settlements by virtue of their uncontested residence in a town while they were slaves; to hold that a slave could obtain a settlement in a town on the basis of uncontested residence therein while he was a slave would amount to holding towns unjustly responsible for failing to contest the residence of—or in legal parlance, "warn out"—slaves. As stated earlier, prior to the 1767 revision of the settlement laws, individuals could obtain a settlement in a town on the basis of uncontested residence within the town. Unlike ordinary migrants, however, slaves' residence had never been contested, i.e., they had never been "warned out"—precisely because, as legally invisible subjects of claims, they were deemed legally incapable of obtaining a settlement in their own right. Thus, applying Greenfield's arguments to the facts of the case, Romulus and Rosanna should not be deemed to have acquired a settlement in Greenfield on the theory that they had lived in the town as slaves without being "warned out" between 1753 and 1767; instead, emancipation should be the moment of their emergence as legally visible subjects of claims. They and their children should be deemed "foreigners"—the legal responsibility of the Commonwealth.

The court's ruling was cryptic. It explicitly refrained from deciding whether former masters or towns were legally responsible for the support of emancipated slaves, but it decided that slaves under "principles of common law" gained a settlement where their masters were settled.[87] As a result,

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[86]Shelburne v. Greenfield, Court Files Suffolk, Vol. 1189, No. 159855 (1795).

[87]The Court was undoubtedly referring here to the principle that slaves derived settlements from their masters; but it was ignoring the fact that this principle had originally been intended to allow slaves to make claims on the town community only as a matter of last resort when masters were unable to support their slaves.

Romulus and Rosanna were found to possess a legal settlement in Greenfield. Shelburne could recover from Greenfield the expenses of supporting Romulus, Rosanna, and their children, and the entire family could be transported out of Shelburne.[88] In declaring that former slaves were *not* "foreigners" to Massachusetts, but that they derived settlements from their masters, the court absolved the Commonwealth of the responsibility for supporting former slaves.

In 1796, in the case of *Littleton v. Tuttle*, the Supreme Judicial Court supplied the answer to the question it had left open in *Shelburne v. Greenfield*, namely that of deciding between former masters and towns in allocating the legal responsibility for the support of former slaves. On April 9, 1794, a resident of the town of Littleton, William Tuttle, delivered the following threatening note to the Selectmen of the town:

> These are to notify you that I have a Negro man with me by the name of Jacob alias Cato which is chargable [sic] & unable to support himself who I suppose to be the proper Charge of said Town, that you immediately provide a place for and remove him, or I shall of necessaty [sic] be oblidged [sic] to visit you with him.[89]

Tuttle acted on his threat. Jacob—who had been six years old when Tuttle purchased him in 1779—had been retained in Tuttle's service until he had grown incapacitated in 1794. When the Selectmen failed to respond to his threatening note, Tuttle simply carried Jacob to the Selectmen and left him with them. Obviously chagrined, the Selectmen sued Tuttle to recover the costs of supporting Jacob. At trial, it was proved that Jacob had been born in Littleton to slaves; that his mother had been the property of a certain Harwood; and that it was Harwood who had sold Jacob to Tuttle. In resolving the question of whether Littleton or Tuttle was ultimately responsible for Jacob, the Supreme Judicial Court came up with the entirely preposterous theory that Jacob "being born in this country, was born free; and that [Tuttle] was not chargeable for his support after he was 21 years of age."[90] By fabricating the myth that no individual born in Massachusetts could be born a slave—a myth directly contradicted by the facts of the very case before it—the Supreme Judicial Court formally absolved former slaveowners of legal responsibility for the support of their slaves. Taken together, these two cases—*Shelburne v. Greenfield* and *Littleton v. Tuttle*—essentially solved the dispute among the Commonwealth, the towns, and former slave-

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[88] 5 COLLECTIONS OF THE MASSACHUSETTS HISTORICAL SOCIETY FOR THE YEAR M,DCC,XCVII 46 (Ser. I) (1798).

[89] Littleton v. Tuttle, Court Files Suffolk, Vol. 1064, No. 150987 (1796).

[90] *Cited in* Winchendon v. Hatfield, 4 Mass. 123, 128 n.1 (1808).

owners over the legal responsibility for former slaves by placing the burden solely upon the towns.[91]

At least within legislative quarters, the *Shelburne v. Greenfield* case was being closely watched as it wound its way through the legal system. The Committee on Accounts deliberately refrained from passing on various accounts claiming reimbursement for the support of former slaves while the case was pending before the Supreme Judicial Court.[92] As soon as the decision came down, it rejected all such accounts. Not surprisingly, the towns sought to have the decision overturned. In February 1796, the General

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[91]The towns did not give up their attempt to compel former slave-owners to assume the legal responsibility for the support of black paupers. After they had failed in *Littleton v. Tuttle*, the towns resorted to a more creative legal theory to shift the legal responsibility for blacks onto their former masters. In 1736, Massachusetts had passed an act directing all inhabitants of towns

> who shall receive, admit and entertain any Person or Persons not being Inhabitants of such Towns, either as Inmates, Boarders or Tenants in the House where such Person dwells, or in any other House of his whatsoever, within this Province, or under any other Qualifications, for more than the space of twenty days

to provide town poor relief officials with an "account" of such persons; if town inhabitants failed in this task, they were to be responsible for all charges arising with respect to persons received and entertained by them. *An Act in Further Addition to an Act Directing the Admission of Town Inhabitants, Made and Passed in the Thirteenth Year of the Reign of King William the Third* (1736), *reprinted in* 2 PROVINCE LAWS, *supra* note 22, ch. 16, at 835. The object was clearly to facilitate town poor relief officials' task in identifying "foreigners" and giving them notices of "warning out" in order to prevent such "foreigners" from obtaining a settlement on the basis of residence within the town.

Clearly, former slave-owners had not provided town poor relief officials with an account of slaves they brought into towns; because slaves were deemed incapable of obtaining a settlement on the basis of residence within the town—and were in any case legally invisible as subjects of claims—town poor relief officials had little reason to pay attention to the presence of slaves.

In 1799, the Town of Topsfield sued Thomas Emerson, an inhabitant of the town, for receiving, admitting, and entertaining one Nancy Porter in his dwelling house in 1765 without providing town poor relief officials with an account of her as required by under the 1736 law; Porter had become chargeable and Topsfield was trying to hold Emerson responsible for the costs of supporting her. Perkins v. Emerson, Supreme Judicial Court (Essex County) at 1 (1799). Of course, Nancy Porter—characterized by the town as "an Inmate or Boarder"—had been a slave. DANE'S ABRIDGEMENT, II, 412–13. By claiming that Emerson had violated the 1736 law when he had received and entertained Porter without providing the town with an account of her as required by law, Topsfield was trying to shift the burden of supporting Porter onto her former master. The Supreme Judicial Court held that Porter had been Emerson's slave from 1765 to 1776; that as such she could not be considered an inmate or boarder within the meaning of the 1736 law; that as such she could not be warned out of Topsfield; and, therefore, that "it was to no purpose for [Emerson] to have given notice in twenty days, as the act required in the case of inmates, &c." *Id.* at 413.

[92]MASS. ARCHIVES, SENATE UNPASSED LEG., SC1, Ser. 231, No. 2272 (1796) (Petition of Acton).

Court circulated a bill entitled "An Bill making provision for the Support of poor negroes & mulattoes."[93] Specifically targeted at the *Shelburne v. Greenfield* decision, the bill declared that no blacks who had been slaves prior to 1767—when it was still possible for ordinary migrants to obtain a settlement by uncontested residence within the territory of the town—would be deemed to have acquired a settlement in a town by virtue of residence therein while a slave. Such former slaves would be "considered as the poor of the Commonwealth." The question of legal responsibility for those enslaved—whether by birth, purchase, or otherwise—after 1767 was not explicitly dealt with. Unfortunately for various towns, this bill did not pass. With it died all formal attempts to shift legal responsibility for the support of former slaves onto the Commonwealth on the ground that they were "foreigners."[94]

Not surprisingly, after the Supreme Judicial Court's decision in *Shelburne v. Greenfield*, towns became increasingly careful about specifying in their petitions for reimbursement that the black paupers in question had never been owned by any of their own inhabitants; they knew that any admission to that effect would imply that the black pauper possessed a settlement in the town and bring a summary rejection of the petition.[95] Similarly, in the accounts for reimbursement that they routinely submitted to the Committee on Accounts, town poor relief officials became quite scrupulous about designating a black pauper's origins in a seemingly "real" place outside Massachusetts, such as Connecticut, New York, Pennsylvania, Rhode Island, Virginia, or the West Indies, rather than in "Guinea" or "Africa."[96] The idea was to show that all black paupers with respect to whom

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[93]MASS. ARCHIVES, JOURNAL OF THE HOUSE OF REP., at 331, 343 (Vol. XVI, May 1795-Feb. 1796).

[94]MASS. ARCHIVES, HOUSE UNPASSED LEG., SC1, Ser. 230, No. 4488 (1796) (Draft Act for the Support of Poor Negroes). Notwithstanding the Supreme Judicial Court's decision in *Shelburne v. Greenfield*, at least in the period immediately following the decision, petitions to the General Court to get it to support former slaves continued. For example, in 1796, complaining about the influx of "negros . . . who were freed when they were old and worn out" (this could be a reference either to former Massachusetts slaves or to black migrants into the state), the Selectmen of Natick prayed the General Court that such individuals "may be provided for in some other way than the poor of said town of Natick." MASS. ARCHIVES, HOUSE UNPASSED LEG., SC1, Ser. 230, No. 4405 (1796) (Petition of Selectmen of Natick). Towns petitioned the General Court to accept the legal responsibility for supporting former slaves well into the early nineteenth century. *See, e.g.*, MASS. ARCHIVES, SENATE UNPASSED LEG., SC1, Ser. 231, 1803, 3010 (Petition of Deerfield); MASS. ARCHIVES, HOUSE UNPASSED LEG., SC1, Ser. 230, 1807, 5966 (Petition of Selectmen of Sheffield).

[95]MASS. ARCHIVES, SENATE UNPASSED LEG., SC1, Ser. 231, 1796, 2182 (Petition of the Selectmen and Overseers of the Poor of Uxbridge).

[96]Examples are too numerous to be listed here in their entirety. For some early instances, see MASS. ARCHIVES, MASS. GEN. CT. COMM. ON ACCOUNTS, ACCOUNT ROLL SUBMISSIONS, 1786-1850, Roll No. 34 (June 17, 1796), Pauper Accounts (Town of Lynn,

reimbursements were being claimed were *bona fide* migrants into Massachusetts.

In fact, under the pressures of showing that black paupers were *bona fide* "foreigners" to the state, towns even began to produce detailed narratives about black paupers that all went to showing that they came from outside Massachusetts. By the late 1790s, it is not uncommon to read accounts of black paupers ranging from those who were born in the West Indies, followed a career at sea, and entered Boston as sailors[97] to those who were either slaves or the descendants of slaves in various New England, Middle Atlantic or Southern states and came to Massachusetts for a better life.[98]

The fact that towns had essentially lost the battle to construct former slaves as "foreigners" should not by any means imply that they passively accepted their legal responsibility for former slaves. Beginning in the first decade of the nineteenth century, the theater of battle shifted to one of bitter squabbles *among* towns. Precisely because this phase of the refusal of the claims of emancipated blacks is less related to the subject of this Article—the attempted legal construction of former slaves as "foreigners"—it will not be discussed at great length here. Needless to say, in light of the fact that the *Shelburne v. Greenfield* and *Littleton v. Tuttle* decisions had firmly linked the former slave's settlement to that of his master (while absolving the master of all legal responsibility for his former slave), the black pauper's history of enslavement haunted all disputes regarding blacks' "belonging" to towns; it simply could not be shaken off.

In 1808, questioning the idea articulated in *Littleton v. Tuttle* that no person could be born a slave in Massachusetts, the Supreme Judicial Court definitively stated the view that slaves derived settlements from their masters *as slaves* and that slaves were thus not capable of obtaining settlements in their own right.[99] From this basic principle emerged the usual judicial

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Town of Salem); MASS. ARCHIVES, MASS. GEN. CT. COMM. ON ACCOUNTS, ACCOUNT ROLL SUBMISSIONS, 1786-1850, Roll No. 37 (June 22, 1797), Pauper Accounts (Town of Wrentham); MASS. ARCHIVES, MASS. GEN. CT. COMM. ON ACCOUNTS, ACCOUNT ROLL SUBMISSIONS, 1786-1850, Roll No. 39 (June 28, 1798), Pauper Accounts (Town of Lenox).

[97] *See, e.g.*, MASS. ARCHIVES, MASS. GEN. CT. COMM. ON ACCOUNTS, ACCOUNT ROLL SUBMISSIONS, 1786-1850, Roll No. 34 (June 17, 1796), Pauper Accounts (Town of Kingston); MASS. ARCHIVES, MASS. GEN. CT. COMM. ON ACCOUNTS, ACCOUNT ROLL SUBMISSIONS, 1786-1850, Roll No. 35 (Nov. 25, 1796), Pauper Accounts (Town of Worcester); MASS. ARCHIVES, MASS. GEN. CT. COMM. ON ACCOUNTS, ACCOUNT ROLL SUBMISSIONS, 1786-1850, Roll No. 36 (Mar. 10, 1797), Pauper Accounts (Town of Deerfield, Town of Lynn, Town of Newburyport, Town of Norton).

[98] The instances here are too numerous to be cited. *See, e.g.*, MASS. ARCHIVES, MASS. GEN. CT. COMM. ON ACCOUNTS, ACCOUNT ROLL SUBMISSIONS, 1786-1850, Roll No. 40 (Mar. 1, 1799), Pauper Accounts (Town of Stoughton).

[99] *Winchendon*, 4 Mass. at 129 (1808).

elaborations. Accordingly, in a succession of cases, it was held that slaves retained their master's settlements after emancipation and could communicate them to their wives only if they got married *after* they were emancipated;[100] that an individual must be a slave—and not a servant hired for a term of years—in order to derive a settlement from his master;[101] and that the children of slaves derived no settlement from their parents if born before emancipation.[102]

Occasionally, however, the idea articulated in *Littleton v. Tuttle* that no person could be born a slave in Massachusetts was revived. The effect was a surreptitious transfer of legal responsibility for the support of former slaves from the towns to the Commonwealth. For example, in 1819, the Supreme Judicial Court was asked to decide the question of the legal settlement of Lucy Goman. In blatant contradiction of a decade of precedent, the court resuscitated the fiction that no person could be born a slave in Massachusetts. According to this fiction, notwithstanding the fact that Lucy had been born to slaves who were owned at the time of her birth by an individual possessing a legal settlement in Westfield, she was deemed free-born. The fact of being free-born had important consequences for the question of her settlement; it meant that she had none. Ruling that Lucy could derive a settlement neither from her parents (because they were slaves and could not communicate a settlement to their children), nor from her parents' master (because she was free-born), nor by reason of birth in Westfield (because birth had by that time been removed as a basis of settlement), the court ruled that Lucy "must therefore be *filia reipublicae*, never having gained a settlement in any other town in the commonwealth."[103] Thus, by being labeled free-born, Lucy was assimilated to the legal status of a "foreigner."[104]

Precisely because the focus of this Article has been on the struggle around making former slaves "foreigners," very little has been said thus far of the experiences of emancipated blacks as they emerged as legally visible subjects upon the landscape of claims. Although a detailed discussion of this subject is beyond the scope of this Article, it is worth mentioning at least some details to underscore the point that the debate about the legal position of former slaves was necessarily accompanied by a corresponding, albeit infinitely more horrific, treatment of former slaves "on the ground." This

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[100]Dighton v. Freetown, 4 Mass. 539, 541 (1808).

[101]Stockbridge v. West Stockbridge, 12 Mass. 400 (1815); Stockbridge v. West Stockbridge, 13 Mass. 302 (1816); Stockbridge v. West Stockbridge, 14 Mass. 257 (1817).

[102]Andover v. Canton, 13 Mass. 547, 551 (1816).

[103]Lanesborough v. Westfield, 16 Mass. 74, 74–76 (1819).

[104]This position continued to be articulated into the 1850s. *See* Edgartown v. Tisbury, 64 Mass. 408, 410 (1852).

treatment accompanied—and no doubt considerably aggravated—the fact that many blacks crossing the threshold from slavery to freedom found themselves facing an intense poverty that they had not experienced as slaves.[105]

In the years following emancipation in New England, former slaves found themselves victims of a plethora of racist devices aimed—literally and metaphorically—at getting rid of them, and thus at producing New England as a space cleansed of both slavery *and* former slaves. In addition to town officials' constant harassment on charges of "disturbing the public peace," "disorderly conduct" and so on, blacks found themselves vulnerable to having the settlement laws applied discriminatorily against them; they routinely faced banishments, whippings and confinements in workhouses in attempts to get them to return to the places where they "belonged." Not surprisingly, blacks resisted such attempts vigorously, fashioning their worlds as best they could in the face of hostility, and openly flouting legal barriers—such as those of the settlement laws—standing in the way of their plans.[106]

In light of such experiences, it is hardly surprising that former slaves petitioned the General Court for assistance to enable them to return to "Africa."[107] Dated January 16, 1798, the following strikingly eloquent petition requesting assistance to return to "Africa" begins as follows:

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[105]*See Queries Respecting the Slavery and Emancipation of Negroes in Massachusetts, Proposed by the Hon. Judge Tucker of Virginia, and Answered by the Rev. Dr. Belknap, in* 4 COLLECTIONS OF THE MASSACHUSETTS HISTORICAL SOCIETY FOR THE YEAR M,DCC,XCV 206 (Ser. III) (1795).

[106]MELISH, *supra* note 15, at 122-37, 190–91. Blacks were also discriminated against in the actual administration of poor relief. Scholars have effectively documented that New England town officials consistently afforded black paupers both inferior treatment and lesser protections before and after the American Revolution; for example, an examination of Rhode Island indentures binding out both white and black children between 1750 and 1800 reveals that white children were consistently provided greater training in literacy skills than black children, which would in turn enable them to secure an elevated station in life as adults. *See, e.g.*, Ruth Wallis Herndon, Servants of the Community: Black and Indian Children as Bound Laborers in Eighteenth-Century New England (paper presented at the American Historical Association Meeting, Chicago, IL, Jan. 9, 2000); *see also* Robert E. Cray, Jr., *White Welfare and Black Strategies: The Dynamics of Race and Poor relief in Early New York, 1700-1825*, 7 SLAVERY AND ABOLITION 273 (1986).

[107]Such petitions predate the founding of the African Colonization Society in 1816, and thus the rise of the formal colonization movement as such. The earliest petition in Massachusetts dates to 1787. On February 11, 1787, the House of Representatives considered a "petition from a number of African Blacks praying to be enabled to return to their native country." MASS. ARCHIVES, JOURNAL OF THE HOUSE OF REP., at 381 (Vol. VII, May 1786-May 1787). For evidence of other efforts by blacks to return to Africa, see Arthur O. White, *The Black Leadership Class and Education in Antebellum Boston*, 42 J. NEGRO EDUC. 504, 509 (1973).

> Humbly shew the subscribers, that they are descended from African origin—that they, or their ancestors, were transported from their native Country, to this land, by force, and under circumstances of ignominy & degradation—that, tho the laws have relaxed their severity in regard to their condition, and the subscribers are declared free, yet there still exists such an invincible distinction of complection, and such a mortifying inferiority, derived from that distinction and a sense of their degraded and unhappy station in society, that they are deprived of ambition & enterprise, their minds are unmanned, their genius shackled, and they are left destitute of those incitements to industry, exertion and virtue, which have a silent, but constant & powerful operation in forming individual & national characters. Tho entitled to Freedom by the benevolent provision of the Constitution of the Commonwealth, it is impossible that the blacks should have a fair and equal chance with the whites in the midst of whom they live, for the enjoyment of that Freedom, or the common blessings of life. From the earliest childhood they cannot but perceive ten thousand marks of degradation. They grow up impressed with the habitual conviction, that they are an inferior, distinct, humbled class of men, who are to be treated with contempt, & forever excluded from all the rank, and consideration, and connections, and honours & offices of the community in which they reside. Their blood is viewed as too mean to intermingle with that of the Whites. They are treated as a different race of beings. *Tho born here, they are considered by others and cannot divest themselves of the idea, that they are still strangers in a foreign land, a land, which, so long as they continue in it, they & their children are destined to serve, but not enjoy.* [108]

What is remarkable about this petition is the petitioners' sense of their own foreignness being *produced* by whites (not to mention their grasp of the socially constructed nature of race; they complain that they are treated "*as* a different race of beings"). Undoubtedly, town poor relief officials' attempts to have former slaves legally classified as "foreigners" within the logic of the settlement laws must have had a great deal to do with this. What the petitioners failed to mention, however, was that their foreignness in the eyes of the community—specifically, the focus on the "fact" of their coming from "Africa"—had everything to do with the fact that they had emerged from slavery. They had become "strangers in a foreign land" in no small part because—with the demise of slavery—they had become legally visible subjects of claims.

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[108]MASS. ARCHIVES, HOUSE UNPASSED LEG., SC1, Ser. 230, 1798, 4730 (Petition of Africans to Enable Them to Return to Africa) (emphasis added). Undoubtedly aware of growing calls to ship Africans back to Africa, the petitioners were careful to ask the General Court to make provision at the public expense for the transportation only of such blacks "as may choose to return" to some place in Africa. *Id.*

IV. CONCLUSION

By the 1820s, the problem of black "foreigners" in Massachusetts was represented solely as one of controlling the influx of blacks from the outside. In 1822, in a report entitled *Free Negroes and Mulattoes*, a legislative committee emphasized "the necessity of checking the increase of a species of population, which threatens to be both injurious and burthensome."[109] In this regard, Massachusetts was joining the chorus of free states that were hostile to the prospect of blacks moving into their territories.

At the same time, the official myth of Massachusetts' unequivocal commitment to anti-slavery principles had begun to solidify. The report lauded "respect for hospitality and for the just rights of all classes of men, in the constant and successful exercise and maintenance of which, the inhabitants of Massachusetts have been singularly conspicuous"; it narrated the history of slavery in Massachusetts as a history of unremitting opposition to slavery.[110] There was absolutely no mention of the effort just two decades earlier to classify former Massachusetts slaves as "foreigners" on the basis of their origins in "Africa."

Of course, in the nineteenth century, the theater of efforts to represent free blacks as immigrants at the precise moment that they emerged from slavery shifted to the Upper South. Ira Berlin has masterfully documented how manumissions created an "illegal" free black class in the Upper South. As a class living under the constant threat of deportation only because they were no longer slaves, free blacks in the antebellum South suffered all the kinds of exploitation enabled by fear—in the areas of labor, access to justice, and so on—that "illegal" immigrants suffer today.[111] At the same time, the African Colonization Society represents a dramatic instance of inventing geographic origins for blacks as they emerged from slavery. Unlike Massachusetts town poor relief officials, who contented themselves with invoking "Africa" to shift legal responsibility for former slaves onto the Commonwealth, the African Colonization Society *literally invented* a territory—the disastrous Liberia experiment, with a history that smacks of Euro-American imperialism—where free blacks were properly "from" and to which they would be returned.[112] While a discussion of the free black experience in the Upper South as a certain kind of immigrant experience is

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[109]MASSACHUSETTS GENERAL COURT, HOUSE OF REPRESENTATIVES, FREE NEGROES AND MULATTOES, at 1 (Boston, True & Green 1822).

[110]*Id.* at 3.

[111]*See generally* BERLIN, *supra* note 14.

[112]The standard text here remains P.J. STAUDENRAUS, THE AFRICAN COLONIZATION MOVEMENT: 1816-1865 (1961).

beyond the scope of this Article, even this cursory reference to it points to the crying need for fresh historical interpretation.

The attempt to read African-American history as U.S. immigration history in the specific way done in this Article has had two aims, both of which are related in different ways to the fetishization of territory that underlies our understanding of immigration. First, as should have become clear by now, this Article has sought to undermine the dominant contemporary rendering of the problem of immigration, the solution to the problem of immigration, and influential legal-theoretical justifications of the solution to the problem of immigration, all of which rest upon a fetishization of territory. Although blacks themselves had neither entered nor left Massachusetts as they crossed the threshold from slavery to freedom in the 1780s, freedom brought along with it the imperative of making them "foreigners," and thus the justificatory "fact" of their geographic origins in "Africa." However, the real problem was that of dealing with legally visible subjects who were beginning to articulate themselves upon the landscape of claims.

This fragment of African-American history suggests that the "problem" with immigration is not that immigrants come "here," that the solution is not to keep immigrants "there," and that we cannot responsibly justify this solution on the ground that immigrants have a "there" to which they can return. The "problem" is instead one of curtailing immigrants' legal visibility on the landscape of claims, something the contemporary state actively does in a variety of ways that include guarding its territory, removing individuals from its territory on the flimsiest of grounds, maintaining millions of immigrants suspended in a state of "illegality," and denying immigrants' welfare rights. Put another way, the state does keep immigrants out, but keeping immigrants out does not mean that they are simply kept out of territory.

Of course, the African-American experience in late eighteenth century Massachusetts underscores the ultimately constructed quality of the "somewhere else" that the contemporary state routinely pins onto immigrants as a strategy for denying their claims. In this regard, it is important to emphasize that the African-American experience described here should not be read as a fundamental mismatch with an "authentic" immigrant experience that can be coherently grounded upon the immigrant's spatial movement from "there" to "here," but as a model for all immigrant experiences to the extent that it offers a way of analyzing how, when, and why a "there" or "somewhere else" comes to be pinned onto immigrants. Following this analysis, we should be suspicious of all legal-theoretical justifications for refusing immigrants' claims on the community that adopt as an opening position, as Michael Walzer does, that every human being belongs to "some human community." The fact that every human being belongs to "some human community" too easily leads to the conclusion that

it is permissible to refuse immigrants' claims "here" because they can take their claims "there." Whether or not there is an actual "there" there, to be facetious, is quite irrelevant; what matters is how, when, and why the state invokes this "there." It is in this sense that the "there" from which immigrants come reveals itself to be constructed.

Second, one might identify a certain *ethical imperative* in connecting African-American history to U.S. immigration history by focusing on the moment of African-Americans' emergence from slavery as the moment of their becoming immigrants, rather than by representing African-Africans as immigrants on the ground that they came from "there" to "here," from Africa to the New World.

It is a tragic fact of American history, and indeed of contemporary American life, that immigrants have used their difference from African-Americans to become Americans. African-Americans have always served as the foil through which a certain national identity—whether an explicitly racist white national identity created through European immigration, or an ethnicized liberal multicultural identity created through Asian and Latin American immigration—has been produced.[113]

Within the logic of the conventional "Whiggish" historiography of U.S. immigration developed in the 1920s, the unifying narrative of immigrants' voluntary spatial movement from "there" to "here" in search of freedom and opportunity left out the African-American experience on the ground that African-Americans—unlike all other immigrant groups—had not "chosen" America. Through the privileging of choice, immigrants became Americans; they simultaneously distanced themselves from African-Americans. Under the pressures of liberal multicultural inclusiveness, as stated in the introduction, the contemporary historiography of U.S. immigration seeks to "correct" this shortcoming by underplaying the requirement that an individual move voluntarily from "there" to "here" in search of freedom in order to qualify as an immigrant, and by emphasizing the simple fact that African-Americans moved from "there" (Africa) to "here" (the New World). The brute fact of movement in space—something that African-Americans share with Asian-Americans, European-Americans, and Hispanic-Americans—is deemed sufficient to render African-Americans immigrants. Thus, it is possible for immigration historians like Roger Daniels to claim that "the slave trade was one of the major means of bringing immigrants to the New World in general and the United States in particular."[114]

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[113]*See* MICHAEL ROGIN, BLACKFACE, WHITE NOISE: JEWISH IMMIGRANTS IN THE HOLLYWOOD MELTING POT (1996); Toni Morrison, *On the Backs of Blacks, reprinted in* ARGUING IMMIGRATION: ARE NEW IMMIGRANTS A WEALTH OF DIVERSITY . . . OR A CRUSHING BURDEN? 97 (Nicolaus Mills ed., 1994).

[114]DANIELS, *supra* note 4, at 54.

But this is ultimately a highly problematic enterprise, in no small part because of the politics of liberal multiculturalism itself. Within the liberal imagination, multiculturalism is about the celebration of the formally equivalent *positive identities* that immigrants allegedly bring with them when they move from "there" to "here" and that immigrants allegedly want to protect from the incursions of the state. These positive identities are seen as offering immigrants a quasi-autonomous cultural-ethical space within which to realize themselves as authentic subjects, a space with which the procedural liberal state is told it should not interfere. I would argue that this rendering of the immigrant experience once again erases the African-American experience to the extent that it does not adequately take into account either (1) the racism of contemporary immigrants towards African-Americans that permits these immigrants to construct the ethnicized identities that sit so comfortably with liberal multiculturalism or (2) the fundamental imbrication of African-American identity with a historically racist state.[115] The latter observation is particularly important. There is a real danger to the liberal multiculturalist impulse to separate identities from the state insofar as it can easily slip into a denial of African-Americans' very real claims upon the state *as African-Americans*. The concerted attack on affirmative action at universities across the country might be taken as a sign of how the liberal multiculturalist impulse has established itself in ways that adversely affect African-Americans.

By contrast, if the narrative of immigration is rethought in the way suggested here, i.e., immigrant identities are not so much about choosing to move from "there" to "here," nor even about the brute fact of moving from "there" to "here," but about always being produced "here" in order to refuse individuals' claims upon the community, African-Americans might be seen not just as being connected to other immigrant experiences, but as offering *the model* for understanding the immigrant experience itself. All groups, whether European-Americans, Hispanic-Americans, Asian-Americans, or African-Americans, are made immigrants "here," not least when the state pins a "there" onto them as a strategy for managing their claims upon the community.[116] Of course, it goes without saying that such a rethinking of the narrative of immigration in terms of *shared subordination* does not preclude

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[115]Occasionally, ideologues of liberal multiculturalism themselves have acknowledged that the attempt to ethnicize black identities might not work because of an "ethnic-American racism." MICHAEL WALZER, WHAT IT MEANS TO BE AN AMERICAN 44–45 n.30 (1992).

[116]In this Article, I have focused principally on state practices that pin a "there" onto immigrants without dealing explicitly with the complicated question of how such state practices have effectively *produced* nationalist ideologies. For attempts to show how state practices and nationalist ideologies have historically fed off each other, see Ali Behdad, *Nationalism and Immigration to the United States*, 6 DIASPORA: A JOURNAL OF TRANSNATIONAL STUDIES 155 (1997).

a simultaneous sensitivity to the hierarchies through which that subordination is instantiated.