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# The Confluence of Law and Antebellum Black Literature

## LAWYERLY DISCOURSE AS A RHETORIC OF EMPOWERMENT

Andrea McArdle\*

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

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

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antebellum authors. First, it considers the hortatory addresses of Prince Hall, the founder of the African Masonic Lodge in Boston, who did much to “publicize” a black voice<sup>9</sup> in the late eighteenth and early nineteenth century. Hall anticipated later abolitionists in his critique of racial inequality, call for community solidarity, and elaboration of blacks’ moral superiority to whites. The article then examines the lawyerly methods and impact of David Walker’s controversial *Appeal to the Coloured Citizens of the World*, published in three editions in Boston in 1829 and 1830.<sup>10</sup> Circulated widely among free blacks in Boston and elsewhere in the North, the *Appeal* was also smuggled into the South, where its call for resistance, framed in terms of divine providence, has been posited as a possible catalyst for Nat Turner’s storied slave rebellion in 1831.<sup>11</sup> Finally, the article discusses author and lecturer Maria Stewart’s multiple roles as critic of white institutions and advocate, exhorter, and goad to Boston’s free blacks. In the early 1830s, Stewart continued Hall’s and Walker’s efforts to contribute to an antebellum black public sphere, an albeit limited “discursive space” in which free blacks engaged in reasoned discussion about access to legal rights and political status.<sup>12</sup>

**“WE HAVE IN COMMON WITH ALL OTHER MEN A  
NATURAL RIGHT TO OUR FREEDOM”: ENGAGING THE  
LEGAL CULTURE OF REVOLUTIONARY-ERA BOSTON<sup>13</sup>**

The “lawyerly” character of early antebellum black literature had its provenance in Boston’s well-developed tradition of public advocacy, and in black Bostonians’ participation in the city’s charged Revolutionary-era legal culture. In that culture, republican discourse invoked the law as a mechanism for vindicating rights.<sup>14</sup> As the Boston-area colonial resistance movement in the 1770s marshaled a growing literature of argument, pointed questioning, and assertions of aggrievement against the legitimacy of British rule,<sup>15</sup> Boston’s black community adopted similar rhetorical strategies. Free and enslaved blacks framed challenges to bondage in petitions to government officials<sup>16</sup> that drew attention to the logical disjunction between domestic slavery and the colonists’ own objections to political bondage to Britain.<sup>17</sup> At the same time, the comparative openness of the Massachusetts courts to the claims of persons of color<sup>18</sup> encouraged enslaved blacks to use the litigation process to pursue freedom.<sup>19</sup>

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

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

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

access to public education to taxpaying blacks,<sup>62</sup> and sought support for plans to emigrate to Africa.<sup>63</sup> Arguing the dissonance between the persistence of slavery and an enlightened polity,<sup>64</sup> these petitions as a genre<sup>65</sup> afforded Massachusetts' black population considerable scope for articulating aggrievement.

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

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

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

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

**"WE MUST BE GOOD SUBJECTS TO THE LAWS OF THE LAND . . . GIVING HONOUR TO WHOM HONOUR IS DUE": THE CULTURAL ACTIVISM OF PRINCE HALL<sup>86</sup>**

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

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

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

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

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

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

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

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

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

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

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

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

#### "ENLIGHTEN US AND TREAT US LIKE MEN"<sup>127</sup>: DAVID WALKER'S PROVOCATION

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

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

Jefferson's influence informed the methodology as much as the substance of the *Appeal*. For example, Walker's article 2 offered a systematic "development of facts"<sup>148</sup> instantiating defections and deceptions within the black community,<sup>149</sup> in the manner of Jefferson's fact-intensive studies in *Notes on the State of Virginia*.<sup>150</sup> And if, in organizational structure, the *Appeal* bore a surface resemblance to the United States Constitution, featuring a preamble and four articles of argument (slavery, ignorance, preachers of the Christian religion, and the colonization plan, respectively),<sup>151</sup> in format and tone the *Appeal* seemed more akin to another Jeffersonian composition, the Declaration of Independence. This resemblance occurs most markedly in article 1, which elaborates a set of grievances;<sup>152</sup> asserts rights to freedom and personhood ("For you must remember that we are men as well as they");<sup>153</sup> and justifies violent means, if necessary, to achieve them ("[I]t is no more harm for you to kill a man, who is trying to kill you, than it is to take a drink of water when thirsty").<sup>154</sup> Walker's informed use of key texts from the American legal canon thus served as organizing principle, discursive method, and substantive theme. His intertextual referencing of Jefferson's work entailed an ironic and parodic revision that exemplifies what Henry Louis Gates would describe as the literary trope of "signifying," a "metaphor for Afro-American formal revision," which proceeds ironically, playing upon the audience's expectations, and by "evoking presence by absence through indirection."<sup>155</sup>

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

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

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

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

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

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

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

### Articles 2 and 3: The Uses of Emotion

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### "COME LET US PLEAD OUR CAUSE BEFORE THE WHITES": MARIA STEWART'S LAWYERLY PROSE<sup>214</sup>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

63. Nash, *supra* note 14 at 66–67.
64. *Id.*, at 58; Zilversmit, *supra* note 16 at 110.
65. Robert Ferguson's illuminating investigation of the uses of genre theory in the study of legal discourse, *supra* note 4, offers a model for my analysis of the petitions as both legal and literary documents.
66. Quarles, *supra* note 16 at 290; and Nash, *supra* note 14 at 58–59.
67. "Petition: Province of The Massachusetts Bay To His Excellency Thomas Hutchinson, Esq. Governor; To The Honorable His Majesty's Council, and To The Honorable House of Representatives in General Court assembled at Boston, the 6th day of January, 1773" in *A Documentary History of the Negro People in the United States from Colonial Times Through the Civil War* [1951], Herbert Aptheker, ed. (New York: Citadel Press, 1969), 6. Hereinafter cited as *History of the Negro People*.
68. *Id.*, at 6.
69. The jeremiad was a genre that drew on biblical conventions combining lamentation over current conditions and admonition to enslavers that they would face divine punishment. William L. Andrews, *To Tell a Free Story: The First Century of Afro-American Autobiography* (Urbana: University of Illinois Press, 1986), 14, 123.
70. "Petition," *History of the Negro People*, *supra* note 67.
71. *Id.*, at 7.
72. *Id.*
73. Nash, *supra* note 14 at 58; Condit and Lucaites, *supra* note 17 at 42.
74. Condit & Lucaites, *id.* For example, in a petition to the legislature dated April 1773, the four authors asserted with some confidence that they "cannot but expect your house will again take our deplorable case into serious consideration, and give us that ample relief which as men, we have a natural right to" (emphasis in original). With an increasing firmness of tone, the writers indicated that they "are willing to submit" to local laws, but only until they can afford to remove themselves from Massachusetts and relocate to the African coast, "which we determine to do," "Petition of Boston, April 20, 1773," in *History of the Negro People*, *supra* note 67 at 7, 8.
75. "Petition To His Excellency Thomas Gage, Esq. Captain General and Governor in Chief in and over this Province To The Honorable his Majesty's Council and The Honourable House of Representatives in General Court assembled May 25, 1774," in *History of the Negro People*, *supra* note 67 at 8–9.
76. *Id.*, at 9.
77. *Id.*
78. Condit and Lucaites, *supra* note 17 at 85–86. The petition bears eight signatures, including Prince Hall's. See Charles H. Wesley, *Prince Hall: Life and Legacy* (Washington: United Supreme Council Southern Jurisdiction Prince Hall affiliation, 1977), 64.
79. Zilversmit, *supra* note 16 at 110.
80. Quarles, *supra* note 16.
81. "Petition To The Honorable Council & House of [Representatives] for the State of Massachusetts Bay in General Court assembled, January 13, 1775," in *History of the Negro People*, *supra* note 67 at 10.
82. *Id.*
83. Condit and Lucaites, *supra* note 17 at 37.
84. White, *supra* note 2 at 35, 78.
85. Condit and Lucaites, *supra* note 17 at 76–77.
86. The quoted text is from "A Charge Delivered to the Brethren of the African Lodge on the 25th of June, 1792" in Dorothy Porter, ed., *Early Negro Writing, 1760–1820* (Boston: Beacon Press, 1971).
87. Zilversmit, *supra* note 16 at 114; and Higginbotham, *supra* note 18 at 91, 93–94.
88. As in all the colonies, the community of blacks in Massachusetts did not enjoy parity under the law with Anglo-Americans or other inhabitants of European stock. Free blacks suffered various civil disabilities: they were unable to serve in the militia, were barred from certain kinds of property ownership, and were subject to curfew. Greene, *supra* note 20 at 303, 299.

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

- Baker's terms, "revised notions of how human interactive modes—other than reason alone—bear on publicity" (*id.*, at 14).
183. Walker, *supra* note 127 at 30.
184. *Id.*, at 30–33.
185. *Id.*, at 31–32.
186. *Id.*, at 38–40.
187. *Id.*, at 42–43.
188. *Id.*, at 43 (emphasis in the original).
189. *Id.*, at 46–47, 54–55.
190. *Id.*, at 75.
191. Peter Charles Hoffer has drawn attention to the many points of resemblance between the Declaration and the conventions of a bill in equity, a kind of legal pleading which seeks relief on the basis of principles of justice or equitable trusts rather than on common-law grounds. Peter Charles Hoffer, "The Declaration of Independence as a Bill in Equity," in *The Law in America, 1607–1867*, William Pencak and Wythe W. Holt, Jr., eds. (New York: New-York Historical Society, 1989), 196–204.
192. Walker, *supra* note 127 at 65–66.
193. *Id.*
194. *Id.*, at 69–70.
195. *Id.*, at 75 (emphasis in the original).
196. See Michael C. Dawson, "A Black Counterpublic? Economic Earthquakes, Racial Agenda(s), and Black Politics," in *The Black Public Sphere*, *supra* note 12 at 206.
197. *Id.*, at 206–207.
198. See, for example, text accompanying *supra* notes 162, 169, 183–185, 187.
199. Condit and Lucaines, *supra* note 17 at 78, 85–86, 88.
200. Bruce, *supra* note 96 at 182.
201. Gates, *supra* note 144 at 77.
202. Although Walker scholar Peter Hinks concludes that Walker likely succumbed to the same consumption that had taken his infant daughter only days before his own death (Hinks, *supra* note 180 at xliiv), other scholars had deemed his death to be "mysterious" (Aptheker, *supra* note 139 at 50), or possibly the result of poisoning (Charles M. Wiltse, "Introduction," in Walker, *supra* note 127 at xi).
203. Wiltse, *id.*, at ix; Richardson, *supra* note 123 at 6; Brawley, *supra* note 94 at 123; and Aptheker, *supra* note 139 at 45–53.
204. Hinks, *supra* note 180 at xxxix–xli.
205. Hinks, *supra* note 11 at 160.
206. *Id.*
207. Aptheker, *supra* note 139 at 47–48.
208. Wiltse, *supra* note 202 at x.
209. Bruce, *supra* note 96 at 187–88; and Hinks, *supra* note 180 at xliii–xliiv.
210. Bruce, *id.*, at 192.
211. Harding, *supra* note 6 at 94–95.
212. *Id.*, at 142–43, 151.
213. In an 1883 address, Frederick Douglass acknowledged Walker's pivotal role in galvanizing the abolitionist movement; and in the essay "Dusk of Dawn," published in 1940, W.E.B. DuBois regarded the *Appeal* as a precursor of the projects designed to advance the political and social status of blacks in America. Hinks, *supra* note 11 at 114–15.
214. The quotation is from a lecture by Maria W. Stewart, delivered at Franklin Hall, Boston, September 21, 1832, in Stewart, *supra* note 123 at 45.
215. Richardson, "Introduction to Part I," at 19, in Stewart, *supra* note 123.

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

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