ADDITIONAL NOTES

ON THE

History of Slavery in Massachusetts.

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SLAVERY IN MASSACHUSETTS.

Mr. Moore's Reply to his Boston Critics.

"Pudet haec opprobria *vobis*
Et dici potuisse, et non potuisse refelli."

To the Editor of the Daily Advertiser :*

When Aristeidês was requested by his ignorant and unknown fellow-citizen to write his own name on the shell, in order that he might receive the compliment of ostracism, we read that he did so, without a word, after hearing the reason for the request. If he had argued the point, the story would have lost its brightest feature. And if he had been himself the chief trumpeter of his own fame, making the States of Greece ring with the echoes of his own sonorous self-esteem, the whole tale might have had a different moral. As it is, I see no impropriety in the suggestions of Mr. Grote, that "the purity of the most hon-"ourable man will not bear to be so boastfully "talked of, as if he were the only honourable man "in the country; the less it is obtruded, the "more deeply and cordially will it be felt, and "the story just alluded to, whether true or false, "illustrates that natural reaction of feeling pro-"duced by absurd encomiasts, or perhaps by in-"sidious enemies under the mask of encomiasts, "who trumpeted forth Aristeidês as *The Just* "man of Athens, so as to wound the legitimate "dignity of every one else."—*History of Greece*, IV. 461.

The modern champions of Massachusetts, glittering in historic brass, have assiduously challenged comparisons with all her contemporaries in all periods of their respective history. I have furnished, in my volume on *Slavery in Massachusetts*, the materials for a comparison between the facts of her history and the pretensions which have been set up by her historians, on that topic alone.

Is it my fault if the sharp contrast of the truth with the false pretence strikes like satire? if the simple, straightforward statement of facts, amply sustained by due reference to unquestionable authorities, sounds like an indictment? The indictment if any must be found not against Massachusetts, but those who through ignorance or design have so utterly misrepresented this portion of her history hitherto. The just fame of Massachusetts cannot be diminished; in it her children have an inheritance, which is a possession forever. Its glory is only obscured by false lights. Massachusetts has no reason to shrink from the truth, whether her self-righteous historians can bear to face it or not. Her part in the earlier, as well as later history of American Slavery will no longer be obscure; and the efforts of the earliest champions of Human Freedom within her borders will no longer be concealed because they were unsuccessful. The faithful witness to the truth that is in history will not be intimidated by abuse, nor restrained from telling the whole truth, lest her enemies may be glad, or the multitude of the uncircumcised rejoice. She is far more likely to suffer from the cowardice of her friends than the courage of her enemies. But this is no new phase of historical sensitiveness in Massachusetts. When that pious Independent, Daniel Neal, wrote his famous history of New England, a century and a half ago, he disappointed the most godly by "taking merely the task of a historian upon "him" instead of writing the lives of the Puritan saints, and narrating the marvels of their Christian experience, in humble imitation of Cotton Mather's Magnalia. And "the freedom" he took "to expose the persecuting principles "and practices of the first planters, both in the "body of the history, and his abridgment of "their laws" was "displeasing" and "offensive" to some in England, and probably more in Massachusetts. The venerable Dr. Watts took upon himself the duty of remonstrance, and told the historian he "could wish he had more "mollified some of these relations, and had "rather left out those laws, or in the same page "had annexed something to prevent our enemies "from insulting" the brethren "on that subject." His answer was—says Dr. Watts himself, in a letter to Cotton Mather—"THAT THE FIDELITY "OF AN HISTORIAN REQUIRED HIM TO DO WHAT "HE HAD DONE," adding, "THAT IT IS A NOBLER "THING TO TELL THE WORLD THAT YOU HAVE "RECTIFIED THE ERRORS OF YOUR FATHERS, "THAN IF MERE EDUCATION HAD TAUGHT YOU "SO LARGE A CHARITY." The good Psalmist, in communicating Neal's manly reply, also ventured

* The Editor of the *Daily Advertiser* having declined the publication of this reply to his strictures in consequence of its length, it appears in the *Historical Magazine* as an original contribution.—Ed. Hist. Mag.

some practical advice to his Massachusetts friends which he thought would tend to promote "a "happy effect of that part of the history which "now makes us blush and ashamed."—*M. H. S. Coll.* I. v. 200.

It is a remarkable fact that the chief champions of the Puritans in these days are men who reverse the ordinary methods of demonstrating the integrity of their subject: They start with the conviction that the theories of religion and morals, if not of politics and society, of their ancestors were entirely wrong, but their lives and actions were almost invariably right. The modern Massachusetts Christian, whose entire intellectual being is nothing if not ultra-protestant and liberal, with no starting-point of protest but the last results of Puritan Orthodoxy, and no limit to his liberality short of spiritualism or absolute infidelity—builds his historic Valhalla out of the old walls of the New England Jerusalem, and fills it with images of the grim heroes of Puritanism.

And their stern lineaments show but shabbily in the straw-stuffed canvas, which the new school of Puritans bear about in their solemn processions, like the wax figures with which the Romans in the days of their degeneracy were wont to inflame the imaginations of the mob. It is the peculiar province of a just historical criticism to demonstrate the fallacy of those subjective processes in reasoning by which the theories of the present day are translated into the remote past, and the Fathers of New England are glorified for thoughts and feelings absolutely impossible to them, and justified for their actions by principles from which they would have shrunk in horror, as impious, blasphemous, and utterly wicked.

The *old* Puritans were the genuine—and their history is not wanting in examples of that magnanimity which submits to just reproof without resentment, and that higher grace which is at once the sign and the blessing of repentance—that real Christian courage which could humiliate itself by confession.

Samuel Sewall, whose fame is justly though imperfectly celebrated in my book, as the first Massachusetts abolitionist, was also a judge in that bloody Assize of Witches at Salem, and his voluntary confession before God and men of his sin in that thing, ought to be cherished as one of the most precious memorials of the history of Massachusetts. That solemn sad figure, handing the confession to his minister "as he passed by" in the meeting-house, "and standing up at the "reading of it, and bowing when finished in the "afternoon" of that winter's day, is to me personally more beautiful and glorious than all the heroes of the Magnalia. Yet Cotton Mather, and all the other trumpeters, whether trumpeters of silver or trumpeters of brass, are most seen and heard throughout all the generations of New England.

History will one day demonstrate that they were not the men who did the "generation-work" so near to the hearts of the Fathers, and not yet wholly forgotten by their true children. And History must now reject with scorn the "fables "agreed upon," for the question of which I have been denounced as "the Devil's advocate, oppos-"ing the canonization of Massachusetts!"

I. The first division of the exceptions taken by my critic is somewhat miscellaneous, but I follow his discourse. He thinks it does not appear that the negroes who formed a part of the return cargo of the "Desire" in 1638, were imported by "the authorities"—nor that the Indian captives were disposed of according to "previous practice." It is clear, from all the documents, that "the authorities" controlled the disposition of these captives "whom the Lord "had delivered into their hands" in that bloody war against the Pequods,* and Winthrop himself invariably says, "*We* sent them to Bermuda," etc. Is the inference improbable that the same authorities who shipped them out for sale or exchange were interested in the proceeds, whether "cotton, tobacco, negroes," or "etcetera?" The sales made by Pierce must have been like those in 1675, "on the country's behalf." "*We*" sent them, and "*we*" undoubtedly received the returns.† It was at a much later period of the history of Massachusetts that the laws were passed to encourage private as well as public enterprises against the "Indian Enemy and Rebels." In these acts, a strong discrimination was made in favor of volunteers, although the soldiers in regular pay were amply provided for. In 1694, volunteers were to have for every Indian, great or small, which they should kill, or take and bring in prisoner, 50 pounds, as well as all plunder. Soldiers under pay were to receive, over and above pay, 10 pounds. In 1695, "the reward for "any Indian woman or young person judged to "be under the age of 14 years that shall be killed "or taken and brought in prisoner, shall be hence-"forth 25 pounds and no more." In 1697, fifty

* Wood refers to these in 1633. "The Pequants be a stately "warlike people of whom I never heard any misdemeanor; "but that they were just and equal in their dealings; not "treacherous either to their countrymen or English, requiters "of courtesies, affable towards the English." *N. E. Prospect, Ed.* 1764, *p.* 72. Four years afterwards they were exterminated by the Puritans! Those who escaped the sword, were sold into slavery, in foreign parts! Yet Winthrop himself said (in 1643) that "they had done us no injury."

† In the war against the Narragansetts, etc., Captain Mason's Commission (July, 1615) concludes thus, "What booty "you take or prisoners, whether men, wemen or children you "may send them to Seabrook fort to be kept and *improved* "*for the advantage of the Colonies*, in several proporcons "answering their charge," etc. *Plymouth Records: IX.* 35 *Hazard: II.* 31.

pounds were to be paid for the scalps of adult Indians, and "*for every Child of the said Enemy, "under the age of Ten years, that shall be by them "slain, the sum of Ten Pounds*, and that such "Party or Parties *shall also have and keep unto "their own use all Plunder and prisoners* by them "taken of the enemy." This appears to have been the earliest resignation by the Provincial Government of their sovereign right to prisoners and captives. In the later laws, liberal premiums continued to be offered for the *scalps of male Indians above the age of* 12 *years*, as well as "*the "benefit of all Indian Prisoners, being Women and "Children under the age above said*," subject only to the condition that they should be "*Transported "out of the Country*." *Mass. Laws:* 1694–1722.

But to return—as to the doubt concerning Lieut. Davenport's charge, the reader must take his choice of the probabilities suggested. Whether there had been more or less "previous prac-"tice" is not very material. I do not know that it would better their case, if it could be shown whether John Winthrop and his associates were the first to commence it or not, or that they did not begin until 1637. The fact is indisputable that they did so then; and that this was not an isolated, solitary instance—the law of 1646, providing for the export for trade of Indians for negroes, bears emphatic testimony—as well as to the further fact denied by my critic—that the trade was followed up. To support this denial, he cites Bradstreet's report to the Lords of Trade in 1680—that there were but 100 or 120 slaves in Massachusetts, of whom 40 or 50 had been imported two years before. To say nothing of the obvious imperfections of this report, does my critic suppose that the "Desire" brought 60 or 70 negroes from Providence Island in 1637–8, who all lived to be counted in this enumeration of 1680–2, or does he acknowledge that the losses by death were more than made good by the increase of these chattels—by such as were "born in the house?"

Admitting the facts which I demonstrated that slavery existed as a social fact in Massachusetts almost from the beginning of the Colony,* and that its legislative history dates from the Statute of 1641—my critic indulges in a little fault-finding with my use of the word "established." He confesses his ignorance how that which had previously existed as unwritten law could "in any "sense" be established by a statute. I claim no credit for superior wisdom, when I declare my belief that the formal enactment into a statute or declaration of fundamentals in the form of liberties by the competent legislative authority must be regarded as "establishing" the doctrine thus promulgated. I never referred the *origin* of negro slavery in Massachusetts to this or any other legislative enactment. Probably there is not an instance to be found in all history of its being originated by statute. But it is equally true that all history may be challenged to produce a nearer approach to a statutory introduction of slavery than the Massachusetts law of 1641, by which it was established. My statement, therefore, is strictly correct. It was "the first statute es-"tablishing slavery in America."

In view, however, of the admissions of my critic, I cannot resist the temptation to inquire what has become of the theory so long, so steadily and so recently maintained in Massachusetts, that slavery is "so odious that nothing but posi-"tive law will support it?"

II. But however doubtful of the effect of the Act of 1641 in establishing slavery, my critic finds great satisfaction in contemplating its authority as a "provision explicitly in favor of "liberty," and expressly "limiting the original "law of slavery." Now, what were the limits to which the prophetic wisdom of the framers of this law restricted this ancient evil? Establishing the institution under a convenient and comprehensive exception, they admitted the slavery of three specified classes, viz.:

1. Lawful captives taken in just wars,
2. Such strangers as willingly sell themselves,*
3. Such strangers as are sold to us:

and added the significant proviso, after promising all the liberties and *christian* usages which the *Jewish* law seemed to them to enjoin, that all this should exempt none from servitude who were judged thereto by authority. This law was subsequently amended. Whether the motive suggested for the omission of the word "strangers" be correct or not, the fact is beyond dispute. It cannot easily be determined what was the intention or practical effect of the omission; but whether by "strangers" they meant to distinguish those not born in the land, or those who were "strangers" by race, as has been suggested by my friend Mr. JOHN C. HURD (whose authority I am glad to see recognized in Boston), it is not necessary to decide at present.†

* There are traces of the presence of negro slaves in Massachusetts as early as 1633. See *Wood's N. E. Prospect. Ed* 1764. *p.* 91, with reference to the fright of certain Indians, "worse "scared than hurt, who seeing a black more in the top of a "tree looking out for his way which he had lost, surmised he "was *Abamacho* or the devil: deeming all devils that are "blacker than themselves; and being near to the plantation, "they posted to the English, and intreated their aid to conjure "this devil to his own place, who *finding him to be a poor "wandering blackamore, conducted him to his master*."

* It is not improbable that in some instances this consent was like that of the Gibeonites—if not willingly, then by compulsion as the alternative.

† Cotton Mather (*Magnalia, Book VI., Chap. vi., Section* I) furnishes an illustration of the status of "Foreigners and "Strangers." In his sketch or account of the Indians, he mentions an inferior class, whom he calls a sort of Villains," who had been for many generations "known to be *Strangers* or "*Foreigners, who were not priviledged with common right*, "*but in some measure subject*," etc.

All the effect of limitation now claimed for this famous "provision explicitly in favor of liberty" is that it did not provide for slavery by birth—only this and nothing more—that the law "does "not cover hereditary slavery, either by express "terms, or necessary implication." And I am challenged with an air of triumph, to point out the *words* extending slavery to the children of slaves.* Now, the fact is undisputed that by the recognized common law of nations, as well as the civil law, and what is more to the purpose here, by the Jewish law—the natural increase of slave property belonged to the owner, whose right to it was never questioned any more than his right to his calf or his colt. Nobody supposed that the child of a slave was born free, or that the young of domestic animals were *feræ naturæ*. The issue of slaves were unquestionably at that time among "such as were sold" commonly and constantly, and if their condition had been at any time brought to the test of judicial decision, there is no room whatever for a doubt what it must have been "adjudged" to be "by "authority." But there is not a particle of evidence to show that the matter was ever thought of as questionable. I have quoted in my book the statement of Salstonstall of Connecticut in 1704, in which he declares that "according to "the laws and constant practice of this colony "and all other plantations (as well as by the "civil law) such persons as are born of negro "bond-women are themselves in like condition, "that is, born in servitude, nor can there be any "precedent in this government, or any of her "Majesty's plantations, produced to the contrary." I have given a more signal illustration in the semi-judicial action of the legislature of Massachusetts in 1716, in the case of William Brown, the son of a Freeman by a Servant Woman, who had been sold as a slave. His master offered to give him his freedom—if the Court would indemnify him from the law relating to the manumission of negroes—the law of 1703, in restraint of emancipation. None of the learned lawyers of that day in the legislature ventured the suggestion that he was "by law free." Neither lawyers nor judges, of whom there were several in the House of Representatives and Council, could see any mode of relief but the act of indemnity prayed for, which was duly passed. The facts present the same phase through the entire colonial and provincial era down to the time immediately preceding the Revolution, when slavery was first formally challenged in Massachusetts. And among the most prominent and wisest suggestions then made was that of providing by legislation for the emancipation of the children of slaves—whose condition under the existing laws was thus undeniably admitted to be that of slavery: and in 1777, in the most emphatic, if, indeed, it was not the only, direct attack on that institution in all the legislation of Massachusetts—the recognized doctrine of hereditary slavery was included in the denunciations of the law which was proposed.

But "the question as to the legality of hered-"itary slavery has been the subject of judicial "consideration"—and it is in this part of the subject, that I am treated with specific charges of "suppressing inconvenient authorities," "pre-"ferring convenience to honesty," "violating the "record," and what is perhaps regarded as equally discreditable if not criminal, I am given to understand that my presumption in questioning standard authorities in Massachusetts is painfully conspicuous. It is my present purpose to show that the accusations of suppression, misrepresentation and dishonesty are utterly without foundation—and at the same time to vindicate the justice of my previous criticism of the authorities in question. And here I must be permitted to say that I am unable to find in my book any "degree of acerbity" towards the distinguished gentlemen from whose views I have been obliged to differ. If they have done me the honor to read the work, I am quite certain they must be as much astonished as I am to learn from my critic that I have transgressed the limits of a proper courtesy and due respect. If I have anywhere deviated into a way "foreign to the "spirit of historical investigation," I am ignorant of the fact as well as the intention. If my critic had been as cautious as I was, his high tone on this point would be more in harmony with his own performance.

There is no pretence that the legality of hereditary slavery was ever formally questioned, much less denied by any contemporary authority, private or public, legislative, judicial or executive, during the period in which the institution flourished in Massachusetts. If among the earlier cases (between 1766 and 1774) in which the general subject of slavery was involved, there was one in which the modern doctrine was declared by anybody, on or off the bench, it has escaped all my research. The case of *Newport*

* There was yet another description of slaves for which I omitted before to challenge a lawful place in my classification. Perhaps my critic will thank me for calling attention to it. Fugitive slaves sometimes preferred freedom among the savages to servitude among the Christians. This of course led to demands upon the children of the forest, by which they were required to send back the runaways. Failing to obtain a prompt compliance in all cases, the General Court, on the 2d of June, 1641, passed an order by which, "It is declared to bee "the mind of the Court, that if the Indians send not back or run "awayes then, by commission from the Gov'nor and any 3 of "the magistrats to send and take so many as to satisfy for the "want of them, & for the charge of sending for them," *Mass. Records: I.* 3-9. Thus they might "give commission to any "master to *right himself upon the Indians*, for his fugitive "servant." *Winthrop's Answer, &c in Hutchinson's Collection: p.* 121, also, in *Hazard: I.* 509. Should such be considered as "lawful captives taken in just wars," or simply as "judged to Slavery by authority"?

vs. Billing in 1768, presents the most positive and emphatic record as to the legal condition of the negro who attempted to obtain his freedom by process of law, and if it could be ascertained that he was a native of Massachusetts, would be decidedly "a case in point." I have only been able to learn that he was a young Negro Boy on the 15th of March, 1728–9, when he was purchased by Billing for £50. It was found by the highest court in Massachusetts, on appeal from a similar decision in the inferior court "that the "said Amos [Newport] was not a freeman, as he "alledged, but the proper slave of the said Joseph "[Billing.]" *Records:* 1768, *Fol.* 284.

But the judicial oracles to which we are to go for instruction with authority on this topic belong to a much later period. The first in the series of these modern cases, which are claimed to have settled what the ancient law of slavery was, is that of *Littleton vs. Tuttle*, in 1796. It is reported "in part" (as Dane says) in a note to C. J. Parsons' decision of the case of *Winchendon vs. Hatfield*, 4 *Mass.*, 128. The decision in the latter case was made at the March Term, in Suffolk, in 1808, and it was published in 1809. The subject of the former suit was a pauper negro, born of slave parents, in 1773, sold in 1779 by the owner of his mother, to the defendant in the suit, who retained him in his service until he became lame and unable to labor, at the age of 21 years, January 18th, 1794, when he carried him and left him with the overseers of the poor for support. The record of the case shows simply that the town brought an action of assumpsit against the master, which resulted in the recovery of costs by the defendant. *Records*, 1796, 302.

It is stated in the partial report above referred to, that "the Court stopped the defendant's coun- "sel from replying, and the Chief Justice charged "the jury, as the unanimous opinion of the "Court, that Cato [the pauper] being born in "this country was born free; and that the defend- "ant was not chargeable for his support after he "was 21 years of age. And the jury found a ver- "dict accordingly, without going off the stand."

There is an earlier report of this case furnished by James Sullivan, Attorney-General, who was of counsel in the case, for publication in 1798. It is a noticeable fact that he does not state that the judges declared the negro to have been born free. His statement is that "the judges were of "opinion that, as he was born in the town, he "was a proper inhabitant, and that the town was "obliged to maintain him, as it would have been "if he was a white man." *M. H. S. Coll., I. v.* 47.

Nathan Dane, too, in his statement of this case, speaks of it as reported "*in part*" only, in 4 *Mass.*, 128, and adds the remark that "the idea "in this case, of the defendant, was that Jacob "was the slave of his *mother's* master, not the "*father's* master; and the same idea is stated by "Parsons, C. J., in *Winchendon vs. Hatfield.*" *Abridgment, II.*, 413. Both parties to the suit must have been equally astonished at the opinion of the Court.

The next case in the order of time is that of *Perkins vs. Emerson*, tried in Essex in 1799. My critic does not take this in order, although he "affects" disappointment with my notice of it. His language is worthy of examination here. Beginning with the expression, "Mr. Moore's brief "note of it," he soon regards it as "Mr. Moore's "broad statement," which is presently converted into "Mr. Dane's loose statement," and this at last into "Mr. Dane's broad statement." Now the statement is true, and Mr. Dane's summary, which I followed, is not (as my critic alleges) "incorrect"! and the charges of ignorance on the part of Mr. Dane, and dishonesty in the use of the MS. Record by myself, are equally groundless. That Nathan Dane, who was of counsel, and was defeated, should not have known or could have forgotten what was decided in the case, is preposterous: and he not only gives the summary as I quoted it, "correctly," but he expressly contrasts it with the decision in *Littleton vs. Tuttle. Abridgment, II.*, 412. Again, in another place, he refers to it, where he says of the Act of 1736, "This Act extended not to *slaves*," citing *Perkins vs. Emerson. Abridgment, II.*, 417. And yet again, after he had seen the new light of the decision by Chief Justice Parker, in *Lanesborough vs. Westfield*—in his continuation of chapter 53, Art. I., Section 21, giving a summary of that case from 16 *Mass.*, 74, he adds: "*See* S. "23-25, *the case of Perkins, Treasurer, vs. Emer-* "*son*, was three years after the case of *Littleton vs.* "*Tuttle. Abridgment, Vol. IX., Supplement, p.* "190."

James Sullivan also was of counsel with Nathan Dane, for the appellant. He had been counsel for the plaintiff in the previous case of *Littleton vs. Tuttle.* As for Chief Justice Parsons, whether he remembered the case or not, he declared the doctrine of it most distinctly, not only in the "desperate suggestion" that "the issue of "the female slave (according to the maxim of the "civil law) was the property of her master," but in the express statement that *slaves* were not within the statute of 10 Geo. II., c. 3 (the Act of 1736). 4 *Mass.*, 129. That he does not refer to the decision of 1799, in support of either point, does not weaken his opinion—of which I have more to say hereafter.

But all my critic's reasoning from probabilities is utterly futile and worthless; as I now propose to show from the record itself, independently, without reference to Dane or Parsons, whose evidence he discredits.

The court declared that the pauper in question in this suit was "not within the meaning of the "act." The act made any inhabitant responsible for *any person* not an inhabitant whom he should admit or entertain in his house for more than twenty days without the prescribed notice, etc.; and the description of persons among whom she was denied a place by the Court is not limited, as my critic represents, by the words inmate, boarder or tenant, but includes all non-inhabitant persons whatever "under any other qualifi-"cations." She was certainly not an inhabitant, and the decision of the Court therefore in terms excluded the pauper in question from recognition as a person under any qualification whatever! And, so far from having been misunderstood, misrepresented, exaggerated, garbled, or otherwise maltreated by Nathan Dane or myself citing his authority, it fully sustains the doctrine of hereditary slavery in Massachusetts. How far short is it of a declaration that, instead of having been free-born because born in Massachusetts, this child of slaves was not a "person" in the eye of the law? An absolute formal denial of that character of personality which would distinguish her from a *thing?* Attributing to her that peculiar legal incapacity for *rights* which belongs to the nature of a *thing?* so that she could be the object of the rights of persons, but not the subject of rights? She was not a person *sui juris!* She was a chattel-slave! She could not be separated from her owner, and removed by the selectmen of the town, any more than his horse, or his cow, or his hog!

In all the judicial history of America, perhaps of the world, it may well be doubted whether a parallel can be found for this decision of the Supreme Judicial Court of Massachusetts in the last year of the eighteenth century. Is it strange that it has been studiously kept out of sight by the historico-legal champions of the Old Bay State?

The remarks of Chief Justice Parker, in deciding the case of *Andover vs. Canton*, in 1816, state so clearly the recognized doctrine of the slave's incapacity for civil rights in Massachusetts, that I quote them at this point, although I have to refer to the case again in its order. He said with reference to a slave in Massachusetts during the period in which slavery existed there: "*The slave was the property of his master as* "*much as his ox or his horse; he had no civil* "*rights but that of protection from cruelty;** *he* "*could acquire no property nor dispose of any* "*without the consent of his master. His settle-*"*ment in the town with his master was not for his* "*benefit, but to ascertain what corporation should* "*be charged with his maintenance, in case his mas-*"*ter should become unable to support him, or* "*should die, leaving him a charge to the commu-*"*nity. We think he had not the capacity to com-*"*municate a civil relation to his children, which* "*he did not enjoy himself, except as the property* "*of his master.*" 13 *Mass.*, 550. This is not Chief Justice Taney who is speaking, neither is this the language of the Dred Scott decision, but it is the language of the Chief Justice of the State of Massachusetts, declaring the opinion of the Supreme Judicial Court, sitting in bank, forty years before!

The next case in the order of time is that of *Winchendon vs. Hatfield*, 4 *Mass.*, 123, which is so little to the taste of my critic, that he not only denies it place as a leading case, but disposes very summarily of Chief Justice Parsons, whose *dicta* are not to be regarded on this topic, excepting as "desperate suggestions" or "loose statements." I am happy to differ from this opinion. No man was more thoroughly versed in the early history, laws, institutions, manners and local usages of the early settlers of Massachusetts than this honored and conspicuous "Giant of the "Law." No man knew better than he did what was the law of slavery in his native State. And when he declared in this case, that "the "issue of the female slave, according to the "maxim of the civil law, was the property of her "master," he was careful to introduce the unanimous opinion of the Court in 1796, and to brand it as spurious—"certainly in opposition "to the general practice and common usage." He spoke the truth, candidly and sincerely, for he loved it. He belonged to the old school of lawyers and judges, and never learned the dialect of the later Euphemists, or the ritual of the modern Brahmins of Massachusetts.

The next case is that of *Andover vs. Canton*, 13 *Mass.*, 547, in which Chief Justice Parker confirmed the doctrine of hereditary slavery in Massachusetts. His caution (to which I referred in noticing this case in my book) was due to the doubt, not whether the children of slaves were slaves but whether they were the property of the owner of father or mother. The manner in which this case is treated by my critic "seems" vastly like "dissembling." I did not quote or refer to the *semble* as authoritative, but to the Chief Justice's unqualified declaration, after the very emphatic statement before quoted of the slave's incapacity for civil rights in Massachusetts, that "his children, if the issue of a marriage with a "slave would immediately on their birth, become "the property of his master, or of the master of "the female slave." *Ibid:* 551.

I cannot wonder at my critic's alacrity in getting over this dangerous footing, to what he re-

* This was a "civil right" which the slave enjoyed in common with "any brute creatures, which are usually kept for the "use of man," the latter being protected by a special statute against cruelty. *Laws* 1672, p. 39.

garded as "firmer ground;" but I must say, with due deference, that, as he could not have been misled by my caution or my reference to that of the Chief Justice, I am surprised at his eagerness to charge me with tripping, or something worse, so soon after his own fall over this *semble*. But he will find it difficult to make anybody else take up his hue and cry in this instance, or fix on me as the proper object of pursuit. I bear with me neither the consciousness nor evidence of guilt.

It is in the case of *Lanesborough vs. Westfield*, 16 *Mass.*, 74, that my critic finds "firmer ground." In fact, he "seems" to rest and breathe more freely. But his first blow is foul! as he renews the attack. His principal charge of suppression is with regard to this case, which I do "refer to" and "cite by page" as one of the principal authorities relied on by Mr. Sumner, Mr. Palfrey and Mr. Gray, in their statements on this subject. If I had given no reference whatever, I could not recognize the justice of the charge so offensively made; and I sincerely regret that my critic could invent no better motive for me than sheer dishonesty. If I was guilty of any error in this part of the subject, it was in failing to show that the new interpretation of the law of 1641 first dawned upon the historico-legal mind of Massachusetts in 1819, in this very case!

It was the case of a certain pauper negro woman and her child, which was made to depend on the condition of her mother. She was born in 1778, continued in the family of her mother's owner till the formation and adoption of the Constitution of the Commonwealth. How much longer does not clearly appear, but she remained in the same town (Westfield) until 1803, without acquiring any legal residence. She removed to Lanesborough in 1803, was married in June, 1804, and dwelt in the latter place until the time the action was brought which was to determine *the main question* in this as in all these suits—who was to support these negro paupers? On this state of facts, Chief Justice Parker declared the opinion of the Court, as follows:

"By the colonial law of 1646, no bond slave-"ry could exist except in the case of lawful captives "taken in just war, or such as willingly sold "themselves, or were sold to the inhabitants (*Vide* "*Ancient Charters*, &c., 52). Of course, the child-"ren of those who in fact were, or who were "reputed to be slaves, not coming within the de-"scription, could not be held as slaves. And in "the year 1796, it was solemnly and unanimously "decided by the Court, that the issue of slaves, "although born before the adoption of the Con-"stitution, were born free. 4 *Mass., Rep.* 128, "*note, Littleton vs. Tuttle.*"

It will be observed that in this decision the Chief Justice has changed his base, and occupies a position considerably in advance of that which he occupied at the termination of the action in Essex, November Term, 1816—*Andover vs. Canton.*

An examination of his authorities gives us a clue to the motive as well as support of his advance. The "Ancient Charters, &c.," edited by a commission of whom "the venerable legal an-"tiquary," Nathan Dane, was the Chief, was published under the authority of the legislature in 1814. In its pages was reproduced for the first time in a century and a half the Massachusetts statute of Slavery. This law was sandwiched in one and the same separate chapter between an act respecting the assignment of bills, and the famous order of the General Court in 1646, for the restoration to his native country of a kidnapped African. It is proper to add here that this special order was never printed among the Colony Laws by those who made it, or at anytime afterwards, until in this collection as above stated. The language of the Chief Justice, however, shows conclusively that he was influenced by this new combination, for he refers the law of 1641 to the year 1646, and evidently gravitates towards the mild views of interpretation adopted by the index-maker of that volume, whose summary of the whole law, as given in the Index, is "Slavery forbidden."*

This is the only new light indicated in the opinion, for the decision of 1796 was before him, when in *Andover vs. Canton*, he not only acquiesced in the law of his predecessor, but his open disregard, if not undisguised contempt, of that decision. Both were undoubtedly well aware that it had been authoritatively and unquestionably reversed by the same judges who made it, in their careful settlement of the law in the decision of 1799, which I am still obliged to regard (notwithstanding the sneer of my critic) as "a "notable instance of judicial retractation."

But my critic adds still another Ossa upon Pelion to the vast "weight of legal authority" on this point. In the case of *Edgartown vs. Tisbury*: 10 *Cushing*, 408, Mr. Justice Metcalf has "followed his leader"—in Bristol, Plymouth, &c., October Term, 1852. The facts in this case were entirely clear, and embarrassed by no doubt. The daughter of an unmarried female slave,

* As my critic derives some comfort from such little helps, and refers to the marginal note in the Edition of 1672, "No Bond-slavery" as an "epitome" of the law of slavery in Massachusetts, I will add to his collection of "epitomes" by the information that, although the Edition of 1660 gives no marginal note whatever and the Index reference is simply the title itself and number of pages where found—in that of 1672, not only the words "No Bond slavery" appear in the margin, but the Index reference is the title, with an addition, as follows: "Bond-slavery, not allowed, but servitude declared." Perhaps a judicial determination may yet be obtained that slavery had no legal existence in Massachusetts after the publication of that Index!

born in 1772, upon the death of her mother's master, in 1778, was included in the inventory, and appraised and sold at auction, as a part of his property. She was taken away by the purchaser on the day of the auction and continued with him several years. With these facts before him, Mr. Justice Metcalf said:

"As she was born in Massachusetts, she was "freeborn, although her mother was a slave, "and she could not be held as a slave by Allen "[the purchaser at the auction, as above] under "the sale made to him. The relation of master "and slave never existed between Allen and the "pauper." The authorities are *Littleton vs. Tuttle*, 4 *Mass.*, 128, *note. Lanesborough vs. Westfield*, 16 *Mass.*, 74. 2 *Dane's Abridgment*, 211-13. 2 *Kent Com.* (*6th Ed.*) 252. The last is the only new one. In the passage referred to, Chancellor Kent quotes the decision in *Littleton vs. Tuttle*, and adds—"But, though this be the case, yet "the effect of the former legal distinctions is still "perceived, for by statute [not repealed until "1843] a marriage in Massachusetts between a "white person and a negro, Indian or mulatto, is "absolutely void."

Such are the records—such are the authentic reports. In the face of such facts, what are the later decisions and opinions worth? To what extent can such authorities be held to govern either law or history? Is a question of history the same thing as a question of law, and exclusively a matter of judicial determination? The conspicuous jurists of the Boston school ought to know that on a matter of history the opinion of a Judge, even on the bench, is of no authority, but at best is only evidence to be weighed as such. If it be presumption in me to remind them of this fact, I must take the consequences. If I should be crushed under the weight of such legal authorities, it certainly will be "in "spite of my conviction of the unreasonable- "ness of their conclusions." There may be force in my critic's suggestion of something more than indifference among the Puritans to the principles of the laws of heathen Rome. But the more recent magnates of the profession as well as some of the "Apprentices to the Bench" in Massachusetts appear to have extended their inquiries into the Civil Law far enough to learn one important maxim said to be derived from it—"boni "judicis est ampliare suam auctoritatem"—it is the business of a good judge to enlarge his authority. But are we to receive our history as well as law from the Bench? Jeremy Bentham thought it more than enough that the Judges should make law as well as declare it. What would he say to the "conspicuous judicial "instincts" of Massachusetts, whose opinions are to be not only law but history? "Instinct is a "great matter." And no man who is familiar with "the way of putting it" in Massachusetts can doubt for a moment that the champions of her historic fame are subjected, not less than inferior tribes, to the influence of certain fixed impulses or active tendencies, which, like the instincts of animals, are constant and invariable. It does not by any means follow that their results are as infallible as the processes of nature. It is only in men's fables that the instincts of animals are portrayed like the human passions which color every line of human history. Men may be hypocrites and Pharisees—animals never.

It is hardly necessary for me to dwell upon the contrast and opposition between the facts before the Court, and the decisions in these later cases which are held to have settled the law. The decisions absolutely contradict the facts, and rest upon very doubtful grounds, to say the least. They are specimens of "legal construc- "tion," interesting chiefly as individual opinions of the judges concerning what might, could, would or should have been the "intention of the "founders of the Commonwealth," but as my critic says of this question of legal construction, "not bearing upon the subsequent course of the "history of slavery" in Massachusetts. If he had frankly admitted that the hidden virtue of the law of 1641 was never manifested to the world either in theory or practice, until the time arrived in which it had no possible bearing on the character and conditions of slavery in Massachusetts, I could return his slur on my discernment by a sincere tribute to his candor on one point, at least.

But these decisions are "confirmed by the "opinions of jurists"! making the round and top of this legal sovereignty—which it is to be high treason to question or deny. Mr. Sumner has said that "in all her annals, no person was ever born "a slave on the soil of Massachusetts." Mr. Gray has said, "all children of slaves were by "law free." And the historian of New England has said "in fact no person was ever born into "legal slavery in Massachusetts." "The child of "slaves was as free as any other child. No per- "son was ever legally held to servitude in Massa- "chusetts, as being the offspring of a slave "mother."

I should be very unwilling to believe that either of these distinguished jurists and scholars would repeat their statements now, or would fail to correct them upon a proper occasion or opportunity, with cheerful alacrity and due acknowledgment of the new light thrown upon the subject.

To sum up, I may apply the precise argument of my critic in his own language. We have then as a matter of law on this subject an organic act by the people, contemporaneous interpretation of it, and uninterrupted acquiescence in that

interpretation by the legislature, the courts and the people for nearly a century and a half. If the effect of any legal provision can be more conclusively ascertained, I should be glad to know the process.

But the argument from the continued practice of hereditary slavery is declared to be "not even "worthy of a layman's law," and the further assertion is ventured that it "does not touch "either the historical or legal question whether "slavery was hereditary by law in Massachu- "setts." It strikes me that if this means anything, it is a very unworthy quibble. Let us test the doctrine. If the law of 1641 did not cover hereditary slavery, it must have excluded it. If this is the true construction, how is it that not a single example can be produced, not one solitary contemporary fact or instance, to sustain the doctrine, from the entire history of Massachusetts, before the Revolution. If we are to accept this construction, where is the apology to be found for the conscious, wilful, systematic violation of so humane a provision from beginning to end of the history. But in view of the facts, this hypothesis is absurd. It admits that the children of slaves were held as slaves by birth, but denies that they could legally be so held! In a juristical view, it is a contradiction in terms. Acts which are done, and conditions which exist without a challenge for generations, are *law*, by the very definitions of law.

There is no attempt to deny that in point of fact from the beginning to the end of the institution, the children of slaves were actually held and taken to be slaves. My critic recognizes "the foothold which hereditary slavery obtained" and favors us with an "explanation easily found." It were indeed a pity if so rare a specimen of historical philosophy should be lost. Such keen insight into the remote past, and such critical sagacity in solving all the difficulties of the problem presented can belong only to a critic of "conspicuous [historical if not] judicial instincts." I quote "the facts" which constitute "the explanation," in his own language.

1. "For fifty years the number of slaves was so "insignificant as not to attract attention to "questions of this sort."

Then we are to understand that the fathers of New England in 1641, making a statute "explicitly "in favor of liberty," recognized the institution of slavery, and had their attention sufficiently attracted to limit it by providing carefully against its hereditary quality! And straightway not only forgot all about it themselves, but forgot it so earnestly that none of their descendants ever discovered it until in the year 1796, in the excitement of the question how the wretched scattered remnants of the slave races should be provided for as paupers, a Court was found eager to pronounce judgment, without hearing an argument, that a negro, who had been in fact held as a slave from the hour of his birth until he became useless through disability, and his owner rejected the burthen of his support, was born free! That this judgment had to be reversed three years later by the same judges, to meet another phase of responsibility connected with the pauperism of the Massachusetts freedmen, and it was not until there was no longer any danger of their rising from their unhonored graves to claim maintenance and support from those who had exhausted their bodies and souls, that the judges and Courts of Massachusetts could confidently declare that hereditary slavery never was legal in the Old Bay State!

2. "In a thinly settled colony, with scanty "means of communication and almost no regular "channels of general intelligence, the chances of "such a point being brought to the attention of "those most concerned must have been extremely "small."

Slave-owners have never been forward to suggest doubts of their own authority, or to question their own titles to such property before "those "who are most concerned"—the slaves themselves; but I am unable to see how a greater density of population, or an increased service of mail and passenger coaches, with a weekly or even daily newspaper, would improve their "chances" in this respect. It certainly did not work in that way farther South than Massachusetts.

3. "The acquaintance of the public with their "own laws and institutes bore no comparison "with what is seen at the present day."

It is hard to reconcile the standard authorities on the subject hitherto received in Massachusetts, with this suggestion of the comparative ignorance of the people of that State in any period of its history. It has the merit of novelty, whether true or not. The reader will give it due weight in this discussion.

4. "In that state of society an erroneous con- "struction of the law might easily be acquiesced "in for generations, which in the present condition "of things could not pass unchallenged for a sin- "gle year."

Was this the Colony and Province of Massachusetts Bay, during the first century and a half of its existence? Can the people of Massachusetts be brought to believe and acknowledge that the state of society among the Puritans and their immediate descendants during several generations was such that although they had carefully framed and solemnly enacted a public law expressly to exclude hereditary slavery—not a single child of slaves was born in freedom under its provisions, but they continued to buy and sell, to hold and treat as slaves the children and children's children whom they had thus pretended to

emancipate, for nearly a century and a half, without challenge or compunction?" Truly "a slander "of the Puritan Fathers and their children more "unfounded, or more discreditable to the moral "sense of the utterer was never heard from the "enemies of Massachusetts!" It is "an erro- "neous construction of" the morals and manners of that people "from generation to generation," which cannot "easily be acquiesced in," or pass unchallenged for a moment anywhere.

III. As I have nowhere suggested any "diffi- "culty in understanding the legal effect of the "Massachusetts Declaration of Rights, *as applied* "*by the Courts*," or declared "the doctrine of the "*practical* insignificance of the clause"—and as my critic is unable to cite or refer to any account of the process by which the Declaration of Rights was made to extend to enslaved Indians and negroes more complete or more thoroughly faithful to the record than my own—the main question between us in this last division of his labors concerns the history of the first clause of the first article of the Bill of Rights. He appears to maintain what I stated as the received opinion in Massachusetts, for which I am still, even with his help, unable to find the slightest trace of positive contemporary evidence. He challenges my view of "the family traditions which have desig- "nated the elder John Lowell as the author of the "Declaration, and assigned the intention to "abolish slavery as the express motive for its ori- "gin." Regarding it as "unfortunate that I did "not undertake an historical criticism of those "traditions," he proceeds to "establish" them himself in his own way. First, he brings in Dr. Belknap, then the traditions, and then the announcement that "several facts in the life of "Judge Lowell make the statement intrinsically "probable." Of the latter he mentions but one —the "freedom suit" in 1773, of which a particular account is given in my book.

1. "Dr. Belknap's positive statement made "from his own knowledge only fifteen years af- "terwards." What his *whole* statement was will appear below, *unabridged*.

Probably Belknap's statement in 1795 is the earliest. In 1784, he does not appear to have been aware of the new view of the Declaration of 1780. Referring to this subject of slavery, and the return of the *stolen* negroes to Africa in 1646, he adds, "if the same resolute justice had al- "ways been observed, it would have been much "for the credit and interest of the country: and "our own struggles for liberty would not have "carried so flagrant an appearance of inconsist- "ency." *Hist. of N. H., Vol.* 1, *p.* 75. His letter to Moses Brown, July 15, 1786, concerning slavery, does not intimate any knowledge of the new views, but he did acquire the light before June 14th, 1790, when he wrote to David Howell, who had urged upon him the establishment of an abolition society: "I am of opinion that such an "association is entirely needless here, as we have "no slavery to abolish: all persons who can "claim the privilege of being descendants of "Adam being declared free by our constitution." He adds also, "I sincerely wish that the multi- "tudes of blacks among us might enjoy the same "blessings which other people enjoy, as the fruit "of their liberty; but, alas! many of them are in "a far worse condition than when they were "slaves, being incapable of providing for them- "selves the means of subsistence."

In 1792, he wrote in his history as follows: "In Massachusetts, they [negroes] are all ac- "counted free by the first article in the declara- "tion of rights:" and he is evidently unable to see why a similar clause in the Constitution of New Hampshire should fail to produce a similar result. But that people were the descendants of men who did not pretend to have come over to worship God, but to catch fish!

In 1795, he published the following statement, *partly* quoted by my critic, *who omitted the clause which I have italicized*. The first article of the Declaration of Rights "was inserted not merely "as a moral or political truth, but with a par- "ticular view to establish the liberation of the "negroes on a general principle, and so it was "understood by the people at large; *but some* "*doubted whether this were sufficient*." This doubt is significant. It impairs, if it does not destroy, the whole theory which the passage is held to support. But this is not all. The uncertainty which prevailed is further illustrated by the reply which Belknap gives in the same document to the direct query of his correspondent—"At what period was slavery abolished?" He says "by comparing what is said in answer "to queries 4th and 5th, it appears that *the com-* "*plete abolition of slavery may be fixed at the* "*year* 1783." *Ibid*, *p.* 206. His correspondent also asked in query 5th, "The mode by which "slavery hath been abolished? Whether by a "general and simultaneous emancipation, or at "different periods? Or whether by declaring all "persons born after a particular period, free? "The general answer is, that slavery hath been "abolished here by *publick opinion*, which began "to be established about thirty years ago." [1765] *Ibid*, *p.* 201. And yet again, referring to the census, and the fact that no slaves were *set down* to Massachusetts, he says, "This return [in "1790] made by the marshal of the district, may "be considered as the formal evidence of the "*abolition of slavery* in Massachusetts, *especially* "*as no person has appeared to contest the legal-* "*ity of the return*." *Ibid*, *p.* 204. A good thing for Massachusetts! The curious reader may find

in my book an explanation of the way in which this census was made to bear testimony to the abolition of slavery in that State. It will also enable him to appreciate the satisfaction of Dr. Belknap, that no person had appeared to "contest "the legality of the return." *Notes*, p. 247. It would have been melancholy, indeed, if the Constitution of Massachusetts, an organic act by the people, "backed by a contemporaneous judicial "interpretation of it, and uninterrupted acquies- "cence in that interpretation by the Legislature, "the courts and the people," for even ten years, had been made void and of none effect by a single slaveholder's challenge of the marshal's false though flattering return!

Secondly, come "the traditions," or more properly the tradition of the Lowell family. It is already obvious that this tradition is to be tried on its own merits, for Dr. Belknap says nothing whatever about Judge Lowell's agency in the matter. This omission in his history of the subject is more significant in view of the circumstance that they were contemporaries in Boston and probably familiar acquaintances at the time when Dr. Belknap wrote his account of slavery in Massachusetts, for which he collected the materials by circulating printed queries among such gentlemen as were supposed to be well informed or likely to be interested. There is another historian of Massachusetts, who may properly be referred to here. Alden Bradford, born in 1765, graduated at Harvard in 1786, was one of the earliest if not an original member of the Massachusetts Historical Society, whose historical researches and publications justly make his statements and corrections highly important. In his *History of Massachusetts*, (Vol. II., p. 227,) published in 1825, he says of the first article in the Declaration of Rights: "This was inserted, no doubt, as a general "axiom. But it was also said, at the time, that "there was a reference to the condition of the "Africans, which had been held in slavery in "Massachusetts," &c. In his revised edition, published in 1835, he gives the following account: "In 1783, the involuntary slavery of the "people of color in Massachusetts was in effect "condemned and prohibited, by a decision of the "highest judicial tribunal in the State. * * * "The case appears to have been decided on great "constitutional principles recognized in the dec- "laration of the bill of rights 'that all men are "'born free and equal.'" p. 305.

Judge Lowell died in 1802. The late Rev. Dr. Charles Lowell was the third son, born in 1782. His elder brothers, John, born in 1769, died in 1840; Francis Cabot, born in 1775, died in 1817.

The earliest public notice of Judge Lowell's alleged authorship of the freedom clause in the Bill of Rights may be found in a communication to the Editor of the *Boston Courier*, from Dr. Charles Lowell, dated May 17, 1847. It appears to have been elicited by some previous discussion of the question of intention in the framers of the Constitution of 1780, in the introduction of the clause referred to. Dr. Lowell says: "I have the "authority of my late brother, John Lowell, for "saying that he knew that his father, the late "Judge Lowell, who was on the committee, intro- "duced this clause for the express purpose of set- "tling the question about slavery in the State, "and that, as soon as the Constitution was adopt- "ed, he declared that every black in the State was "free, and offered his services gratuitously, to any "such person whose right to his freedom was con- "tested. My brother further told me that he be- "lieved my father wrote that article himself. "* * * I well remember myself, when I "was a boy at Andover Academy, being often "told by an intelligent old black man who sold "buns, that my father was the friend of the "blacks, and the cause of their being freed, or "something to that effect, and that I often had a "bun or two extra on this account."

In 1852, Dr. Lowell communicated the notice to the Massachusetts Historical Society, which is printed in the *Collections*, IV. i. 90. The statement of Dr. Belknap in 1795 is quoted *in part* and is followed by these words: "I feel an hon- "est pride in saying, as I have authority to say, "that this clause was introduced by my father, "the late Judge Lowell, for the purpose above "stated, and that, on its adoption by the conven- "tion, he offered his services as a lawyer, gra- "tuitously, to any slave in the Commonwealth "who might wish to substantiate his claim to "freedom."

In the following year, 1853, Dr. Lowell addressed Mr. Bancroft, the historian, on the subject, referring to his "brief statement" published by the Massachusetts Historical Society as being "founded on the authority of my [his] father "himself." He adds: "At any rate, he inserted "y^e^ preamble from y^e^ Declaration of Independ- "ence for y^e^ express purpose of abolishing "slavery. As a lawyer, and an eminent one, "he knew y effect & gained the first cause tried "in Essex Co., on y subject, on the ground "which he himself had placed y^e^ subject by his "clause in the Bill of Rights."*

In 1856, Dr. Lowell addressed a note to the author of "Anthony Burns a History," in which he said, "My father introduced into the Bill of "Rights the clause, by which slavery was abol- "ished in Massachusetts. You will find, by re- "ferring to the Proceedings of the Convention "for framing the Constitution of our State, and

* The "freedom suit" in Essex here referred to was tried in 1773, seven years before the adoption of the Bill of Rights.

"to Eliot's N. E. Biographical Dictionary, that "he was a member of the Convention, and of the "Committee for drafting the plan, &c., *and that "he suggested and urged on the Committee the "introduction of the clause taken from the Dec-"laration of Independence a little varied*,* which "virtually put an end to slavery here, as our "courts decided, as the one from which it was "taken ought to have put an end to slavery in "the United States. This he repeatedly and "fully stated to his family and friends. * * * "In regard to the clause in the Bill of Rights, my "father advocated its adoption in the Convention, "and, when it was adopted, exclaimed: 'Now, "'there is no longer slavery in Massachusetts; it "'is abolished, and I will render my services as "'a lawyer gratis, to any slave suing for his free-"'dom, if it is withheld from him,' or words to "that effect."

A later statement of this tradition is to be found in the biography of the elder John Lowell, understood to be furnished by the family for the New American Cyclopædia in 1860. It is as follows: "He inserted in the bill of rights the "clause declaring that 'all men are born free and "'equal' for the purpose, as he avowed at the "time, of abolishing slavery in Massachusetts; "and after the adoption of the Constitution he "offered *through the newspapers* his services as a "lawyer to any person held as a slave, who de-"sired to establish a right to freedom under that "clause. The position maintained by him on "this question was decided to be constitutional "by the Supreme Court of the State in 1783, "since which time slavery has had no legal ex-"istence in Massachusetts."

A comparison of the preceding series of statements, which illustrate fully the birth, growth and progress of "the tradition," with the facts and authorities set forth in my "*notes*," etc., will enable all who are interested to decide for themselves whether it will "stand the test of histori-"cal criticism." One feature appears throughout the series, which is of itself a refutation of the intentional theory. It is the recognized necessity for a suit in the Courts to establish the rights of slaves to freedom. This would probably appear with greater distinctness and force *if the newspapers in which Judge Lowell offered his legal services should be brought to light.* The elder John Lowell was undoubtedly among the friends of the black man in Massachusetts at a time when it was less fashionable to be so than it is now. The most conclusive evidence of the fact may be derived from my book, though not to be found in any of the biographical sketches previously published. It is probable that the dramatic story of his action concerning the origin and adoption, etc., of the Bill of Rights, grew out of this general fact, and particularly the illustration of it in 1773, in the Essex "free-"dom suit."

I do not think it is necessary for me to point out the particulars of inconsistency and conflict with established facts, in all this testimony of the late Dr. Lowell, which rests entirely on his remote recollections of what he had been told by his brother. The statement of my critic, that Dr. Lowell "derived it himself from his father," is not sustained by any evidence whatever which I have been able to discover—certainly, not by the authority referred to. It is not necessary to infer the presence of any intention to violate the truth of history in any of the statements of Dr. Lowell. It is neither difficult nor improper to account for his mistakes, when we remember how imperfect are the recollections of age, and how apt such errors are to become identified with truth among the cherished remembrances of filial piety. Suggestions not intrinsically improbable, uncorrected by judicious historical criticism, readily come to be regarded and firmly held as "credible state-"ments of history," especially when, as in this instance, they suit the prejudices of the time, and fall in with the current of popular opinion. But, when once questioned and exposed, the writer who repeats them cannot plead, for his excuse, the same want of intention to deceive.

I have thus re-examined the leading points of animadversion presented by my critic in lieu of that general review of my book which he thinks that it invites from the hand of the careful and candid investigator. The reader who has had the patience to accompany me through the details which I have given, will doubtless indulge me a little further. He must judge whether I have effectually disposed of the specific charges of suppression, dishonesty and misrepresentation, or not. He will also be able to estimate the value of those general accusations with which the former are repeated at the close of the review, as well as the opinion that "in no part of the work is it safe to "follow the author upon trust." This opinion would be stronger in everything but expression if my critic had pointed out a single statement of fact which is not sustained by a formal reference to the authorities on which it is based, or any passages in my work which justify his wholesale denunciation.

But, after all, he tells us that there is nothing new in my book, nothing which was not already well known in Massachusetts! "NOBODY HAS

* This does not appear either in the proceedings of the Convention, or in Dr. Eliot's Biographical Dictionary. Yet Dr. Eliot was a contemporary and deeply interested in biographical and historical researches. He co-operated with his friend Dr. Belknap in establishing the Massachusetts Historical Society. He published his Biographical Dictionary in 1809. In his life, he notices very particularly the services of Judge Lowell in the constitutional convention, which renders his silence on the main point more remarkable.—*Biog. Dict.*, 301.

"DENIED THAT SLAVERY WAS A MARKED FEATURE "IN THE PROVINCIAL HISTORY OF MASSACHUSETTS, "AND TOO MUCH HAS BEEN SEEN OF THE SPIRIT OF "SLAVERY IN OUR OWN DAYS FOR ANY ONE TO SUP- "POSE THAT IT COULD EXIST ANYWHERE WITHOUT "SUBSIDIARY EVILS OF THE MOST REPULSIVE NA- "TURE." No Massachusetts writer ever made such a confession before. Her historians have never recognized or acknowledged this "marked "feature," or indulged its exhibition anywhere; and if I have added nothing to their knowledge of the subject, those who may study it hereafter will not fail to admire the art with which the champions of Massachusetts have hitherto contrived to conceal the truths with which they have always been so familiar.

As for the imputation of local or political prejudice against Massachusetts, I have neither; nor do I know what there is in my work to justify the suggestion that I have written "to please the "personal resentments of literary friends." Neither do I believe it possible "so to write the "history of the best of mankind that they shall "seem to have been the worst." The true history of every community must present its lessons of humiliation as well as pride—that of Massachusetts must acknowledge among her generations, some of the best and some of the worst—

"Non omnes cœlicolas, nec supera alta tenentes."

I cannot accept the views of my critic as to the motto of my book. Fidelity to the truth of history, and manly confidence in its results, are far more honorable than any cowardly sensitiveness to that sort of criticism whose chief weapon is the "*suspicio gratiæ, aut simultatis*"—the insinuation of favor or the imputation of bad motives. Cicero did not counsel cowardice in the face of such hostility. And he who conscientiously obeys the laws of Truth may bid defiance to an enemy who can only insinuate a groundless suspicion of his motives.

GEORGE H. MOORE.

New York, November 10, 1866.