

## FREE RENTY: HISTORICAL CONTEXT AND JUSTIFICATION©

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Defendants (collectively “Harvard”) have moved to dismiss Ms. Lanier’s Complaint. Succinctly stated, Harvard contends that: (1) Ms. Lanier has failed to assert a claim that’s facially viable under governing substantive law; and (2) even if the Complaint stated a viable claim against Harvard, any such claim is stale and subject to dismissal with prejudice on timeliness grounds.

This is a unique and potentially a very important case, whose historical antecedents require close examination. To our knowledge this case presents the first civil dispute in our country’s history wherein the descendant of an African enslaved in the antebellum American South has sought repatriation of physical property – the Images themselves (i.e., the “Renty-Delia Slave Images”) – whose true ownership resides not in Harvard, whose functionaries captured those images by force and without the subject’s consent – but always resided in the subjects of the Images themselves, whose illegal enslavement prevented them from refusing their photographic capture and whom then-governing law viewed as sub-human livestock without civil rights. As importantly, it’s unquestionably the first case in which a direct descendant of an African-born slave toiling in the antebellum American South has laid claim to an historical artifact, which depicts her noble ancestor during his enslavement. This Court can do nothing to remedy the incalculable harm done to those long-deceased slaves, but this case presents it with an absolutely unique opportunity to do substantial justice (albeit in modest measure) that will resonate across three American centuries.

The plaintiff’s core claim, the ancient *replevin* doctrine, sounds in equity, which makes the history of the Renty-Delia Slave Images – the circumstances surrounding their creation and purpose – indispensable to a just resolution here.<sup>1</sup> What follows is

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<sup>1</sup> There’s no small irony in the fact that when a slaveholder invoked civil process to retrieve a fugitive slave in antebellum America, the claim sounded in *replevin* – which enabled the slave-holder to reassert physical dominion over his escaped human chattel – whom governing law viewed as personal property indistinguishable in principle from any other beast-of-burden. Now the descendant of a slave

important both in assessing whether Ms. Lanier has stated a claim *and* if that claim is timely. Consequently, Ms. Lanier respectfully submits this historical examination in opposition to Harvard's dismissal motion. The historical setting in which Tammy's rights arose frames her claims by revealing their origins and associated motives of the players, most importantly Harvard's motives in commissioning the Images.

Harvard reflexively challenges Lanier's claims as time-barred. This perfunctory argument ignores many facts that compress the past century and a half into a very short time-frame indeed. By pleading timeliness as a dismissal ground, Harvard has made it mandatory to explore its rich and active history of: (1) advancing White Supremacist "science" to rationalize slavery (arguably a continuing tort given its recalcitrant refusal to acknowledge plaintiff's rights); and (2) its subsequent concealment, public obfuscation and dissembling about the Renty-Delia Slave Images, which prevented Ms. Lanier from conducting the research that might have revealed her legal rights sooner. As explored more thoroughly below, Harvard buried those Images deep in its archives, which precludes consideration of the intervening century and a half in the Court's timeliness calculus.

It's uncontroverted that those Images resided for over 120 years secreted away in the endless stacks of the sprawling Peabody Museum of Natural History (the "Peabody Museum"). Harvard (deliberately, we believe) buried them deep at the close of the Civil War and within just days of President Lincoln's assassination – until a dedicated Harvard librarian found them almost 120 years later, in 1976 and began researching their provenance. Rather than rewarding her initiative and skillful research (which skills Harvard surely considers pre-requisite to a librarian's professional competence), Harvard abruptly terminated that enterprising young scholar's employment and, upon information and belief, placed the Renty-Delia Slave Images in secure storage in the Peabody Museum like a dirty family secret. Apparently, that hapless librarian deduced and was terminated to protect what Ms. Lanier has come to conclude as well: Harvard still thinks it has a secret. Now that ugly secret is out, however, and it's time to confront the truth. Not until 2012 did it openly acknowledge possession of the Renty-Delia Slave Images, while continuing to feign ignorance about their origins.

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asserts the same equitable claim seeking to recover of the photographic images of her ancestors, which were created by Harvard to prove of the subject's inherent "racial inferiority" vis-à-vis Whites.

It's imperative, therefore, to explore in some detail just how the Images came to exist, why Harvard commissioned them, and why Harvard secreted them away for over a century, through the Civil War, the First and Second World Wars, the Korea War and well into the Vietnam Conflict. The same historical analysis that reveals the factual substance behind Ms. Lanier's claims also explains the timing of her claims as a procedural matter, when they accrued and by when she was required to assert them.

As elucidated more thoroughly below, Harvard erected and even designed many of the obstacles that Ms. Lanier confronted through what was – when undertaken – arguably traitorous behavior perpetrated in the crucible of the Great Debate designed to perpetuate slavery in direct contravention to the clearly articulated policy of the highest court in Massachusetts and its undisturbed 70-year old precedent declaring slavery unconstitutional and, therefore, absolutely abolished within the Commonwealth. Harvard was literally giving aid and comfort to a belligerent enemy, the nascent Confederacy and those Southern slave-owners whose: (1) primitive, pre-industrial plantation economy would have collapsed in short order without African-American slave labor; and (2) whose primary crop, the World's finest and most sought-after cotton fiber, fed the voracious Massachusetts cotton mills whose owners launched our First Industrial Revolution, while building and sustaining their *alma mater*, Harvard.

Harvard and these cotton merchants developed a symbiotic economic relationship that rendered them hopelessly co-dependent. Broadly viewed, slave-holding Southern planters dominated production of the country's most precious renewable resource – cotton – which had developed an international reputation as the World's finest fiber and finished cloth. But although Southern cotton planters enjoyed control over that precious resource, only a few buyers – who no doubt routinely colluded to keep wholesale prices low – existed with an “expansible seller” capacity and the international market presence to devour that resource and demand even more. As against any “out-Stater,” Massachusetts cotton merchants were completely aligned-in-interest, and price-fixing conspiracies as such weren't yet illegal.

What follows is detailed, because the operative facts are complex and far-ranging. It's impossible to appreciate the merit of Ms. Lanier's claims without understanding the historical events that produced their object – The Renty-Delia Slave Images. Our historical research quickly revealed that allegations necessary to advance Ms. Lanier's

claim would: (1) implicate hugely profitable and influential nineteenth century cotton-milling behemoths in eastern Massachusetts, whose monopolistic designs on the World's fine cloth market depended chiefly on American cotton made artificially cheap by African slave labor; which in turn (2) implicates the "Great Slavery Debate" conducted by Congress beginning in about early 1850 – the same year Harvard commissioned the Renty-Delia Slave Images; and (3) thereby places us squarely in the celebrated academic debate between Harvard's chief science professor, Jean Louis Rodolphe Agassiz ("Agassiz"), and Charles Robert Darwin ("Darwin") on human origins, which in America reached fever pitch in political and educational circles during that crucial decade before our appallingly destructive Civil War. Agassiz embraced what has morphed over time into what's known colloquially (and perhaps wryly) as the "Intelligent Design" school-of-thought; human origins, conceived through a superficial melding of the Old Testament's Creation narrative with a race-based pseudo-science – *Harvard's racist pseudo-science*.

We have drawn and expressed various inferences below, which we earnestly believe any unbiased factfinder would perceive as eminently reasonable. We are confident that upon considering this historical account and, upon viewing plaintiff's allegations against that history – the history of the Renty-Delia Slave Images, their creation and purpose – the Court will find that Ms' Lanier has stated a substantively sound and timely claim against Harvard.

#### A. HARVARD'S COTTON-WHITE HEART

As addressed in her Complaint, central to our narrative are several late eighteenth and early nineteenth century Harvard graduates, who: (1) built and operated cotton-milling and cloth-making concerns in eastern Massachusetts during that period; and (2) came to dominate the World market in those hugely popular commodities through intellectual property and trade secret theft, unregulated business cunning, and by exploiting market advantages afforded them by using American-grown slave-picked cotton and the short-staple *hirsutum* species of the *Gossypium* genus in particular, whose various cultivars now account for about ninety percent (90%) of the cotton grown worldwide.

It's critical to appreciate how wealthy and politically influential America's first pre-regulatory industrial capitalists were, particularly when one considers that: (1) their vast business incomes went largely untaxed and unregulated; (2) their business exploits pre-dated ascendancy of the organized labor movement by almost a century; (3) they readily employed penniless immigrants in their mills, even pre-pubescent children, at trifling wages in dangerous jobs without safety standards, legal rights, or governmental oversight; (4) they were especially ill-behaved toward their young (often adolescent) female employees, who lacked the vote and regularly worked over 70 hours a week; and (5) they routinely underpaid and/or docked their hapless employees, who often became trapped by unending cyclical debt to employer-operated necessities stores in "company towns" like Lawrence and Lowell, Massachusetts. A system designed by Lawrence and Lowell to recoup the wages they paid their hand-to-mouth employees.<sup>2</sup>

It's common in academic Economics literature to see Samuel Slater (1768-1835)<sup>3</sup> and Francis Cabot Lowell (1775-1817) described as "Fathers of the American Industrial Revolution" (approx. 1790-1830) and their colossal textile manufacturing operations in New England, and particularly Lowell's in Massachusetts, declared that transformative period's metaphorical "cradle." As any Harvard-educated historian would acknowledge, Slater and Lowell (quite literally) stole early proprietary British machine-driven textile manufacturing technology and replicated it here. They then improved its productivity and expanded regional manufacturing capacity, thereby initiating the "industrialization" of our national economy beginning in about 1790 on the Blackstone River near Pawtucket, Rhode Island where Slater erected his first mill. Then-President Andrew

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<sup>2</sup> Although tangential to our core discussion, the despotic conditions under which many such at-will and utterly powerless employees worked and died in Massachusetts mill-towns clearly rendered them *de facto* – if not precisely *de jure* – indentured servants, bound to their employer-creditors in a daily state-of-being not unlike slavery. <https://teachingamericanhistory.org/library/document/wages-slavery-and-chattel-slavery/>. It's spitting distance from actual human bondage, which explains how magnates like Lowell and Lawrence, who designed these oppressive work conditions to maximize corporate profits, so freely exploited *actual* enslavement. It's perhaps more understandable, therefore, how any cotton-dependent businessperson otherwise religiously or morally disposed to universal emancipation, might: (1) take a neutral position on nationwide abolition purely on what in this period could be explained as robust "Federalist" sentiment; and/or (2) more pertinent to our matter, invoke religious convictions informed by polygenist "science" woven into a White supremacist Genesis narrative – Agassiz's narrative and, therefore, Harvard's narrative.

<sup>3</sup> Born to poor working parents in Derbyshire, England, Slater was indentured as a servant-apprentice to cotton miller Jedediah Strutt (1726-97), who taught Slater how to use Richard Arkwright's (1732-92) so-called "water-frame" – a cotton-spinning frame powered by a waterwheel on his mill in Cromford, Derbyshire – the World's first water-powered cotton-spinning mill. "[Cromford Mill \(Grade I\) \(1248010\)](#)". [National Heritage List for England](#).

Jackson (himself a slave owner) described Slater as “Father of the American Factory System” (which employed children as young *as seven* under notoriously Dickensian conditions) and innovator of the wretchedly exploitive so-called “company town” model that eventually proliferated the pre-regulatory, pre-union American mining and manufacturing industries, especially in the Great Plains and Westward. Slater didn’t attend Harvard, but it made sure to acquire his archives.<sup>4</sup>

Francis Cabot Lowell (1775-1817) after whom Lowell, Massachusetts was named, was a 1793 Harvard alumnus.<sup>5</sup> He founded the Boston Manufacturing Company, which erected the first integrated spinning and weaving factory in the World on the Charles River at Waltham in 1814. He was born to John Lowell (1743-1802) and Susanna Cabot (1754-1777), whose family controlled a privateering fleet trafficking in opium, rum, and African slaves.<sup>6</sup> Lowell married into the slave-trading business and is commonly credited with: (1) creating the now-universal “stock company” corporate model (he invented the stock corporation);<sup>7</sup> and (2) converting Massachusetts from an agriculture-dependent region into a mechanized industrial one – whose principal cultural institution – Harvard – spawned graduates and professors who would help America emerge as a world super-power in the twentieth.<sup>8</sup> Lowell and his Eighteenth and early

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<sup>4</sup> (<https://hollisarchives.lib.harvard.edu/repositories/11/resources/460>).

<sup>5</sup> By this time, Lowell had become known as “the chief manufacturing city in America” *Bullion*, A weekly Review of bullion production and use, January 31, 1881 p.21  
<https://books.google.com/books?id=PP5LAQAAMAAJ&pg=PA21&lpg=PA21&dq=lowell+lawrence+wartime+cotton+trade&source=bl&ots=bt719Fbk4F&sig=ACfU3U3iD53JpTibBxvhRuZd0nycCIvAg&hl=en&sa=X&ved=2ahUKEwjR5Njb6evnAhVgmHIEHaCIAewQ6AEwAHoECACQAQ#v=onepage&q=lowell%20lawrence%20wartime%20cotton%20trade&f=false>

<sup>6</sup> Re “opium” (“Thomas Cabot, 98, Capitalist And Philanthropist, Is Dead” *The New York Times June 10, 1995*) and re “slaves” (“Cabot Family: An American Family” Article from the Encyclopædia Britannica published by its Editorial Board on July 20, 1998). For clarity, a “privateer” is a private individual or armed ship that carries a government-issued commission to capture and plunder foreign-flagged merchant shipping, usually in wartime – it’s basically government-sanctioned piracy.

<sup>7</sup> Chaim M. Rosenberg, “The Life and Times of Francis Cabot Lowell, 1775-1817” (New York: Lexington Books, 2011), 236-37.

<sup>8</sup> On Lowell’s influence generally: Harvard Library, Office for Scholarly Communication, “A Place of Work: The Geography of an Early Nineteenth Century Machine Shop” (David S. Unger 2013)  
[https://dash.harvard.edu/bitstream/handle/1/11095960/Unger\\_gsas.harvard\\_0084L\\_10950.pdf?sequence=3](https://dash.harvard.edu/bitstream/handle/1/11095960/Unger_gsas.harvard_0084L_10950.pdf?sequence=3); <http://nrs.harvard.edu/urn-3:HUL.InstRepos:11095960>; *The Factory: A Social History of Work and Technology*, The Waltham-Lowell Template, pp.46-48 (Alison Marsh 2018),  
<https://books.google.com/books?id=Z9B5DwAAQBAJ&pg=PA47&lpg=PA47&dq=Francis+Cabot+Lowell+%22stock+company%22&source=bl&ots=aZmxO3T95B&sig=ACfU3U1-MNC8ijEsjQAR7l6rMU6nGV9XAA&hl=en&sa=X&ved=2ahUKEwilzrH487LkAhVNRaoKHUtDC2YQ6AEwDHoECACQAQ#v=onepage&q=Francis%20Cabot%20Lowell%20%22stock%20company%22&f=false>

Nineteenth Century lineal male descendants, almost all Harvard graduates, transformed America by their unregulated business exploits in the international cotton textile trade. In so doing, they laid the foundations for Boston and New York to become industrial and economic powerhouses.<sup>9</sup>

Lowell's fellow cotton mercantilist, Abbott Lawrence (1792-1855), is also often celebrated as a titular "Father" of our First Industrial Revolution and both had deep connections to Harvard.<sup>10</sup> In 1819, Abbott Lawrence married Katherine Bigelow, a daughter of the influential Harvard-educated lawyer Timothy Bigelow (1762-1821), who served as Speaker of the Massachusetts House between 1802 and 1820. By the 1830's, Lawrence had acquired and retooled several water-powered cotton mills situated along the Western Canal in Lowell and on the North Canal in what became, of course, *Lawrence*, Massachusetts – a town Lawrence named for himself, then planned and erected as the first model American "industrial city." He expanded those mills and eventually employed several thousand workers at the Suffolk Manufacturing Company, Tremont Mills, Atlantic Cotton Mills, and Pacific Mills. Like his famous father-in-law, Lawrence became a member of the American Antiquarian Society in 1846 and was elected a fellow of the American Academy of Arts and Sciences in 1847 – the same year he single-handedly endowed the Lawrence Scientific Institute at Harvard as a perch from which Harvard's most esteemed and renowned professor proclaimed "scientific truths" favorable to his corporate interests – and, therefore, Harvard's interests.

These über-capitalists amassed their titanic fortunes hydro-mechanizing textile manufacturing and fine cotton cloth production in particular; products made with

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<sup>9</sup> History of Massachusetts Blog, *Massachusetts in the Industrial Revolution* (Rebecca Brooks 2017) <https://historyofmassachusetts.org/massachusetts-industrial-revolution/> (and internal citations to author's sources); History, Art & Archives, United States House of Representatives, Office of the Historian, *Abbott Lawrence 1792-1855*, <https://history.house.gov/People/Detail/16760#biography>; *Legendary Locals of Lowell, Massachusetts*, Howe and Rosenberg (Legendary Locals, 2013), Chapter One: Mills, <https://www.worldcat.org/title/legendary-locals-of-lowell-massachusetts/oclc/854956846/viewport>

<sup>10</sup> Concerning Lawrence's connections to Harvard: Harvard School of Engineering and Applied Sciences, "Abbott Lawrence" <https://www.seas.harvard.edu/about-seas/history-seas/founding-early-years/abbott-lawrence>; concerning Lowell: Harvard Magazine, Frances Cabot Lowell, Brief Life of an American Entrepreneur (Yager 2010) <https://harvardmagazine.com/2010/09/vita-francis-cabot-lowell> (copyright "President and Fellows of Harvard College"); see also re Lowell: National Park Service, Lowell National Historic Park, "Lowell's Southern Connection" (United States Department of the Interior) [https://www.nps.gov/lowe/learn/photosmultimedia/southern\\_connection.htm](https://www.nps.gov/lowe/learn/photosmultimedia/southern_connection.htm); Public Broadcasting Service, "Who Made America: Francis Cabot Lowell" [https://www.pbs.org/wgbh/theymadeamerica/whomade/lowell\\_lo.html](https://www.pbs.org/wgbh/theymadeamerica/whomade/lowell_lo.html)



American cotton, grown and harvested by African-American slaves, in a nation increasingly divided over “The Slavery Question.” Legally unfettered magnates like Lowell and Lawrence depended heavily on forced labor, which empowered their relatively small cotton-milling cabal to dominate the World market by using enslaved African-Americans to maintain and harvest the crop, thereby depressing labor and raw material prices, and increasing their profits correlatively. They advocated not just slavery’s continuation, they actively promoted Northern tolerance and complicity in human enslavement. Through slavery-friendly Congressional advocates led by South Carolina Senator John C. Calhoun, they also advocated for that abhorrent institution’s *expansion* into America’s newest territories in the West.<sup>11</sup>

It’s impossible to overstate slave-picked cotton’s role in America’s explosive economic growth between ratification of the federal Constitution in 1789 (when virtually *no cotton* was grown here) and South Carolina’s secession in December 1860. Given the diverse, arcane and often convoluted transactions by which slaves and cotton were acquired, re-conveyed, pledged as collateral against other business commitments, it’s fair to describe that exclusive Massachusetts Cotton Cabal’s industry-dominating milling association-in-fact enterprise as (at least functionally speaking) a vertically-integrated one with effective control over its entire supply chain. And it fueled America. The crop gave us international prominence, helped to finance the Mexican-American War and development of our enormous postbellum territorial acquisitions, and made possible the country’s robust expansion West of the Mississippi River less than a decade after the Civil War.<sup>12</sup> By 1850 (the year Harvard’s Agassiz presided over creation of the Renty-Delia Slave Images) over 1.8 million of the roughly 3.2 million slaves toiling in

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<sup>11</sup> Lowell died in 1817, but knew Senator Calhoun well. In the aftermath of the War of 1812, British manufacturers attempted to flood the American textile market and undersell our domestic cotton goods. Lowell sought Congressional protection and, working alongside Calhoun, secured passage of the 1816 Tariff Law, which placed a substantial duty on imported – predominately British – cotton and woolen goods. Also known as the “Dallas Tariff” (named for Treasury Secretary Alexander J. Dallas [1759-1817]), the law functioned as the first federal “protectionist” legislation ever passed by Congress. *The Awakening of American Nationalism: 1815–1828*. George Dangerfield, Harper & Row 1965 (pp. 4-14). Massachusetts government and its cotton mercantilist alumni were mutual dependent and, therefore, shared a common interest in preserving slavery and, if possible, expanding it into newly-minted Western States.

<sup>12</sup> *The African Americans: Many Rivers to Cross*, “100 Amazing Facts About the Negro” by Henry Louis Gates Jr. (“Why Was Cotton King?”); PBS.org. See hyperlink: (<https://www.pbs.org/wnet/african-americans-many-rivers-to-cross/history/why-was-cotton-king/>); *Mississippi History Now*, Mississippi Historical Society, “Cotton in the Global Economy 1800-1860” <http://mshistorynow.mdah.state.ms.us/articles/161/cotton-in-a-global-economy-mississippi-1800-1860>



America's South were producing solely cotton.<sup>13</sup> When the first shot of the Civil War rang out at Fort Sumter on Charleston Bay in April 1861, slave-picked cotton accounted for an astonishing fifty-nine percent (59%) of our nation's total export-derived revenue.<sup>14</sup>

In espousing the South's economic strength and cotton's primacy in particular, South Carolina Senator James H. Hammond famously declared that "Cotton is King."<sup>15</sup> He was right. No other commodity has come close, before or since, in relative economic terms. And, viewing the industry as a collective, nothing less than a technology super-company combining Microsoft, Amazon, Google, and Facebook would wield even comparable cultural heft in our time. Expressed as a percentage of our country's most recent annual reported export revenue, in current economic terms cotton would account for a breathtaking 1.475 trillion of the country's 2.5 trillion aggregate export income in 2019. That's light-years beyond a major market player becoming "too big to fail." By 1850, American cotton and cotton products had become our burgeoning nation's economic life-blood – and America, as an enterprise, might well have failed without them.

Milling cotton was like printing cash and America's first mercantilist oligarchs became very rich indeed. Cotton production only increased as ginning (de-seeding and fiber-alignment) technology improved and, by 1860, enslaved African-Americans generated over two-*billion* pounds annually – approximately two-thirds of the entire World's supply. As territories ceded as war spoils by Mexico in 1848 organized themselves and sought admission to the Union as new States, slavery-dependent businesses, most especially New England's cotton milling and textile concerns, saw an opportunity to expand their economic model, which depended entirely on captive African-American laborers, onto an enormous new frontier.

Pursuant to the Peace Treaty signed February 2, 1848 at Guadalupe Hidalgo that frontier comprised all Mexico's antebellum national possessions north of the Rio

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<sup>13</sup> *The African Americans: Many Rivers to Cross*, "100 Amazing Facts About the Negro" by Henry Louis Gates Jr. ("What Was the Second Middle Passage?"); PBS.org. <https://www.pbs.org/wnet/african-americans-many-rivers-to-cross/history/what-was-the-2nd-middle-passage/>

<sup>14</sup> *The Essential Civil War Curriculum – Cotton*, Hahn and Baker, Virginia Center for Civil War Studies at Virginia Tech 2019. <https://www.essentialcivilwarcurriculum.com/cotton.html>

<sup>15</sup> <https://www.americanantiquarian.org/Freedmen/Manuscripts/cottonisking.html>

Grande River and included California, Nevada, and Utah, most of Arizona and New Mexico, together with parts of Colorado and Wyoming.<sup>16</sup> When one includes Texas, whose ownership Mexico ceded officially in 1848, this post-war territorial acquisition opened almost 900,000 gross square miles to potential cotton and cotton textile production (600 million gross acres) and positioned the already burgeoning New England cotton milling industry to corner the World market – *provided* slavery persisted, expanded into new American States, and thereby ensured a reliable supply of raw cotton made artificially cheap by human chattel slavery.

Harvard's heavyweight industrialist benefactors, the Lowell and Lawrence families among other cotton-milling magnates, well understood that expanding slavery into newly-formed States was: (1) economically speaking, indispensable to monopolizing the World cotton market (long before our federal government outlawed monopolies and other anti-competitive trade practices); while (2) from a political standpoint, necessary to maintain sufficient influence in Congress to resist Union-wide abolition. Expanded slavery meant expanded profits, an enlargement and perpetuation of the genocidal institution that was slavery then and, regrettably, is today – two centuries later – in divers settings throughout our modern World.

## B. HARVARD AND MASSACHUSETTS MERGE

Harvard provided these cotton moguls and their so-called “Cotton Whig” political contingent with an ideal stalking horse: A revered academic and cultural institution with outsized influence on the blooming Nation's public discourse; an authoritative and politically “disinterested” voice on all matters with an academic dimension, whose revered professors commanded attention and enjoyed widespread prestige – much as they rightfully do today. Harvard was perceived as having placed America's educational elite on par with those the Old World's time-honored institutions, most especially those in old colonial powers. Even in the mid-nineteenth century, Harvard's venerated imprimatur was a coveted commodity, which these slavery-dependent private business interests exploited to their mutual advantage. But at this historical moment, Harvard also had a critically relevant governmental dimension: The sprawling institution's legal

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<sup>16</sup> <https://www.archives.gov/education/lessons/guadalupe-hidalgo>

marriage to the Commonwealth, which persists even today as a legal matter, is not a frequent discussion topic in this context.

The 1780 Massachusetts Constitution contains some ingenious and elegant legal architecture, which evidently was devised to alleviate uncertainty among already-entrenched businesses and institutions, who likely perceived their property rights (established under an Anglo-American colonial hybrid law) as ambiguated by a wholesale upheaval in legal norms framed as the new supreme law of the Commonwealth (i.e., the 1780 Massachusetts Constitution) and, therefore, likely to trigger unsettling changes in the fledgling State's governmental organization, its laws and legal institutions. It's an enduring truism that legal uncertainty is bad for business.

Harvard wasn't immune to these concerns and wielded sufficient influence in the Massachusetts General Court, the nascent State's bi-cameral legislature, to steer the ratification process at the 1779-1780 Constitutional Convention. It enlisted powerful graduates to protect its fortunes, including 1755 alumnus, our first Vice President and Second President, John Adams (1735-1836), who – according to a web-page maintained by the Massachusetts State government – drafted virtually every provision himself.<sup>17</sup> By the time Massachusetts ratified its Constitution in June 1780, the drafters had dedicated an entire section to the esteemed “University at Cambridge.”

Chapter Five replaces Harvard's then-seated Overseers with a fresh group drawn from the newly re-structured State government and various religious leaders in medium to large Massachusetts towns, whose economic well-being depended in significant measure on cotton-milling. Mass. Const., Chap. V, Art. I, Sec. 3. Carefully read, Adams's celebrated Republicanism is evident in Section Five's centralization of power in the newly-formed State Government, effecting a wholesale dismantling of the hitherto non-public (albeit Commonwealth-linked) governance contemplated under Harvard's founding 1650 Charter<sup>18</sup> – a veritable usurpation by an internally conflicted State government, whose elected representatives and their slavery-dependent benefactors needed a public relations vehicle to help them stem the abolitionist tide.

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<sup>17</sup> <https://wcivil.warww.mass.gov/guides/john-adams-the-massachusetts-constitution>

<sup>18</sup> <https://guides.library.harvard.edu/c.php?g=880222&p=6323072>

Succinctly put, Chapter Five embodies a public-private bargain in which: (1) Harvard is guaranteed undisturbed legal title in all pre-ratification property and associated legal commitments expressed as an affirmative Constitutional right; and (2) Massachusetts government officials and certain hand-picked Protestant clerics in largely cotton-dependent towns replace Harvard’s Overseers “for the time being” in exchange. It further empowers Harvard’s new Overseers to change that institution’s government in whatever manner they deem appropriate: “[N]othing herein shall be construed to prevent the legislature of this commonwealth from making such alterations in the government of the said university, as shall be conducive to its advantage and the interest of the republic of letters, in as full a manner as might have been done by the legislature of the late Province of the Massachusetts Bay[.]”<sup>19</sup>

This Constitutional shotgun wedding assumes special importance here, because the Governor of Massachusetts (and, therefore, a constitutionally-appointed Harvard Overseer) at *our* crucial moment (George N. Briggs; 1844-51) was a so-called “Cotton Whig” compromise candidate hand-selected by textile magnate Abbott Lawrence and Senator Daniel Webster (both newly-appointed Overseers themselves) – perhaps in a foreshadowing of the shameful “Great Compromise” struck in 1850.<sup>20</sup>

Cotton Whigs, like Briggs, were almost unique to America’s newly industrialized Northeast, most prominently in the Massachusetts Congressional delegation, and favored political appeasement of the Slave States (and, therein, slavery’s indefinite continuation) in order to preserve and expand their region’s prosperous cotton mills, whose extraordinary profitability depended entirely upon slave-picked American cotton.<sup>21</sup> Notably, again in the same regard, former Massachusetts Governor (in office January 1836 until January 1840), Edward Everett (1794-1865): (1) was himself a slavery-friendly Cotton Whig and closely aligned with Lawrence and his fellow cotton

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<sup>19</sup> As used therein, the phrase “republic of letters” refers to a long-distance (i.e., inter-continental) intellectual community animated by exchanges in Enlightenment era political and philosophical principles between Old World intellectual luminaries and their revolutionary New World progeny. *The Transatlantic Republic of Letters: A Note on the Circulation of Learned Periodicals to Early Eighteenth Century America*, Norman S. Fiering, *William and Mary Quarterly*, Vol. 33, No. 4 (Oct. 1976), pp. 642-660.

<sup>20</sup> *Daniel Webster and the Trial of American Nationalism, 1843–1852*, Robert Dalzell (1973) pp. 77-78. Boston: Houghton Mifflin. [ISBN 0395139988](#).

<sup>21</sup> *On the Battlefield of Merit: Harvard Law School, the First Century*, Daniel R. Coquillette, Harvard University Press, 2015, pp.

magnates during this critical period; (2) served as Harvard's President from April 1847 until December 1848 during Agassiz's ascent to prominence at that institution; and (3) helped to establish the Lawrence Scientific Institute as a public pulpit for Agassiz, whose pivotal role in Renty's saga we explore more fully below.

Everett, who captained Harvard during this critical moment, plays an important role here and his most enduring public words (at the Gettysburg Battlefield consecration in 1863) stand in stark contrast to his strong predisposition to align politically with Southern slave-owners. Regrettably, Edwards's anti-slavery stance emerged only when war became inevitable. He identified as a Cotton Whig until joining the so-called "Constitutional Union Party" in 1860 – the Presidential election that triggered the Civil War. That *status quo* compromise Party's members: (1) refused to join either the Democrats or the Republicans, thereby avoiding a policy commitment either for or against slavery; (2) favored conciliation toward the Slave States, preservation of the Union, and discouraged debates about slavery; (3) attracted predominantly federal legislators from Southern Slave States; and (4) pledged only "to recognize no political principle other than the Constitution of the country, the Union of the states, and the Enforcement of the Laws." As Union victory became inevitable, Everett abruptly joined the National Union Party – a temporary tactical rebranding of the Republican Party – whose 1864 Presidential ticket (Lincoln and Andrew Johnson [1808-1875]) won in a landslide. Everett died in Boston on January 15, 1865 and was interred at Cambridge. The rebellion he tried to defer by capitulating to cotton magnates and slave-owners dragged on until April 9, 1865 leaving nearly three-quarters of a million Americans dead.<sup>22</sup>

Massachusetts Colony's late eighteenth-century decision to wed the State's executive and legislative chambers with the "University at Cambridge" necessarily influenced – indeed usurped – decision-making at Harvard's highest levels. As a

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<sup>22</sup> After leaving Harvard's administration, Everett replaced Daniel Webster briefly as Secretary of State to President Millard Fillmore (November 1852 until March 1853) and served a brief tenure as United States Senator from Massachusetts (March 1853 until June 1854). Considered among the country's finest orators, Edwards was chosen to deliver a speech when the Gettysburg Military Cemetery was consecrated in November 1863. His two-hour long discourse – now largely forgotten – immediately preceded President Lincoln's timeless "Gettysburg Address," which lasted about eight minutes. Everett wrote Lincoln the next day, "I should be glad, if I could flatter myself that I came as near to the central idea of the occasion, in two hours, as you did in two minutes." <http://www.abrahamlincolnonline.org/lincoln/speeches/everett.htm>.

practical matter, Harvard and Massachusetts effectively merged to create a hybrid quasi-governmental institution, operated under common control by the same government officers, who necessarily shared a strong incentive to preserve slavery given its indispensable role in their collective economic well-being. Massachusetts was wedded to the Southern Slave Block. This became especially important in the trying economic times that followed. Between 1836 and 1854, recessions reigned as *broader* national economic productivity dropped between fifteen (15%) and thirty-five percent (35%) every year until the Great Panic of 1857 and our catastrophic Civil War.<sup>23</sup>

Although Harvard celebrated its bicentennial in 1836, by mid-century it had become as much a prerequisite social weigh-station for an all-White, all-male predominantly East Coast bourgeoisie as an educational institution. It depended heavily – if not entirely – on the largesse and legislative influence of a predominantly Boston-based mercantile class borne of the region’s first Anglo-protestant settlers (the original “Boston Brahmin”), whose families accumulated enormous wealth by spearheading the nation’s cotton-fueled First Industrial Revolution. Surely, virtually every Harvard-educated historian would concur that: (1) New England’s burgeoning cotton textile manufacturers functioned as *the primary* driver in that economic transformation; and (2) their success or failure depended more than anything on a single resource – American cotton made artificially cheap by African-American slave labor. It’s impossible to discredit the notion that Harvard’s conduct was influenced, if not altogether controlled, by Massachusetts-based textile manufacturers, whose vast industrial holdings drove the State economy, elected its politicians and dictated their

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<sup>23</sup> In Europe, too, this was an extraordinary historical moment not unlike the so-called “Arab Spring” as popularly conceived (spontaneous public uprisings driven by liberal Enlightenment Era principles). Although their particulars inform our analysis only tangentially, over four-dozen virtually simultaneous economic and political “revolutions” erupted throughout Europe at this unlikely juncture and so warrant brief mention here to further contextualize our historical analysis. Commonly called “The Revolutions of 1848,” these uprisings: (1) occurred in over 50 countries in every corner of the European Continent; and (2) evolved as essentially working class revolts, which sought to replace centuries-old monarchies with “liberal” independent nation-states. Sources suggest there’s little evidence of any significant coordination or cooperation among these revolutionary movements. But all decried corrupt political leadership, demanded participatory democracy, a free press, and slavery’s abolition in those European enclaves where it persisted. Most were quickly suppressed. Many thousands died and many more chose exile to avoid death. In the end, serfdom was abolished in Austria and Hungary, Denmark dismantled its monarchy, and Holland embraced representative democracy. These uprisings made their deepest inroads in France, Netherlands, the German Confederation, Principalities of the Italian Peninsula (Italy 1861), and in the Austrian Empire until its consolidation with Hungary in 1867 when it relapsed into monarchy as the Austro-Hungarian Empire until the end of the First World War, when its last emperor, Charles I, declined to participate in public affairs and effectively abdicated his family’s 650-year hegemony over Central Europe. <https://www.britannica.com/event/Revolutions-of-1848>

policies, and who depended above all else on human enslavement to preserve and expand their wealth. That, regrettably, is the plainly evident truth based on the incontrovertible history here.

And although expressly intended to operate just “for the time being” at the Constitution’s ratification in 1780, this arranged marriage between Harvard and Massachusetts *qua* a State sovereign survived (in various iterations) for almost a century – throughout the First Industrial Revolution and well beyond. Unsurprisingly in retrospect, it ended only when the Massachusetts legislature abruptly passed a statute delegating election of the university’s Overseers to its Massachusetts-based alumni on April 25, 1865: (1) *just two weeks* after Gen. Robert E. Lee surrendered his Confederate forces to Union Gen. Ulysses S. Grant at Appomattox Courthouse on April 9, 1865; (2) a mere 10 days after Abraham Lincoln’s assassination by militant Southern Secessionist and avowed White Supremacist John Wilkes Booth, who shot the President during a performance at Ford’s Theatre in Washington on April 14, 1865; and (3) just eight months before final ratification of the Thirteenth Amendment.<sup>24</sup>

This confluence-of-events should make us curious to understand the dynamics behind the change, which clearly was prompted by Union victory, nationwide abolition and its catastrophic impact on the Southern State economies – and their sole sources of its primary raw material – cotton. The 38<sup>th</sup> Congress passed the Thirteenth Amendment on April 8, 1864 in the House (119 to 56) and on January 31, 1865 in the Senate (36 to six). The early Reconstruction Era legislatures of a few re-patriated Confederate States (including Alabama, North Carolina, Georgia, and South Carolina) pushed the Amendment over the three-fourths majority required to secure ratification late in 1865, but purported to impose certain interpretive conditions on its application in their jurisdictions. The United States Secretary of State, the staunch abolitionist William H. Seward, ignored their provisos and declared the Thirteenth Amendment ratified without stipulations on December 18, 1865.

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<sup>24</sup> *Acts and Resolves Passed by the General Court of Massachusetts in the Year 1865*, Published by Secretary of the Commonwealth 1865, Chap. 173 (pp. 565-67). Notably, the Governor and Assembly reserved to *themselves unilateral authority to reverse course and reassert control* over Harvard: “This Act shall not be construed in the nature of a contract or a charter, *but may at any time be repealed at the pleasure of the legislature.*” Section 8 (emphasis supplied).



### C. HARVARD'S AGASSIZ RE-ENSLAVES CONGO RENTY

It's against this backdrop that we meet the plaintiff's great-great-great grandfather "Congo Renty," who labored in anonymous captivity for almost half a century before – in 1850 – the defendant, Harvard, appeared on the scene in the person of its by-then-renowned zoology and geology professor, Swiss-born scientist, Louis Agassiz. Renty's reputed status as among the last surviving African-born slaves still toiling in the Southern States (perhaps an anecdote conveyed by South Carolina Senator Calhoun, who surely knew every major plantation owner personally) made him a unique commodity (yet again), this time as a scientific subject. Acting through its esteemed professor, Harvard helped slave-holding commercial interests by paying its professor to present Renty as a physiological archetype personifying the inherent inferiority of the "Black Races," as Agassiz defined that term. It commissioned the Renty-Delia Slave Images as "evidence" supporting Agassiz's claims, which gave slave-holders and their political allies a new "scientific" basis on which to rationalize African enslavement.<sup>25</sup>

Agassiz first came to the United States 1846 on a Prussian scientific expedition, but returned only at the invitation of a fourth-generation Harvard graduate, the cotton-milling and textile magnate, Massachusetts "Cotton Whig" John Amory Lowell (1798-1881). Amory Lowell's father, John Lowell Jr. (1769-1840), had founded the Lowell Institute in Cambridge, which presented lectures on scientific topics. Under Lowell's sponsorship in 1846-47, Agassiz gave no fewer than 24 lectures at the Institute entitled "The Plan of Creation as Shown in the Animal Kingdom,"<sup>26</sup> which posited an ardently "religious" White supremacist, unapologetically slavery-friendly, hypothesis based on ostensibly innate intellectual and capacitive differences between "the Races."

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<sup>25</sup> The subject images are so-called "daguerreotypes." Invented by Louis-Jacques-Mandé Daguerre (1787-1851) and introduced worldwide by 1840, this prototypical photographic process enjoyed a decade on the market before less expensive, complex ones replaced it. The daguerreotypist who captured the Renty Slave Images, Joseph T. Zealy (1812-93) of Columbia, South Carolina, would have: (1) polished sheets of silver-plated copper to a mirror finish; (2) treat those surfaces with fumes that rendered them light sensitive; (3) exposed them one at a time, while enclosed in a wooden camera-box, to a stationary subject for a specified period; (4) washed each exposed plate with a mercury vapor to render the resulting latent images visible; (5) removed light sensitivity with a liquid chemical treatment; (6) rinsed and dried them; and (7) sealed the easily marred results behind glass in protective enclosures. Hannavy, John, ed. (2013). *Encyclopedia of Nineteenth-Century Photography*. Routledge. p. 365. ISBN 1-135-87326-7.

<sup>26</sup> *Anthropology at Harvard: A Biographical History, 1790 to 1940*, David Browman and Steven Williams, Peabody Museum Press at Harvard University (Chapter 2: pp. 23-25).

Agassiz was a notorious showman, who reportedly spoke in a flamboyant Franco-Suisse dialect to the delight of Boston's high society ladies, who adored his Continental affectations. Surely knowing that Protestant clerics in his audience would help sway public opinion, and knowing, just as surely, that Massachusetts government and Protestant clergy controlled Harvard,<sup>27</sup> Agassiz framed his "scientific analysis" in religious language plucked from a King James Bible:

Agassiz's style, personality, and religious fervor made the difference. His lectures inspired such great enthusiasm that Lowell, fellow industrialist Abbott Lawrence, and officials of Harvard collaborated in efforts to keep him in Boston. When . . . he accepted an offer to stay as a professor of zoology and geology at the newly created Lawrence Scientific School, it was a position that was created expressly for him.

*Science and Religion in the Era of William James: Eclipse of Certainty 1820-1880*, Paul Jerome Croce, University of North Carolina Press, 1995, p. 117. Although his expertise lay primarily in studying glaciers and fossilized marine life, Harvard abruptly appointed Agassiz to chair zoology and geology at its new Lawrence Scientific School in 1847.

Yet another slave-holding textile magnate with a huge (and hugely prosperous) New England cotton milling empire – the aforementioned "Cotton Whig" Abbott Lawrence – single-handedly bankrolled formation of the school. In evaluating motive, it's important to note that the ambitious new school's future was in doubt until Lawrence abruptly stepped in:

Early in 1847, Eben Norton Horsford (1818-1893) was elected to the Rumford professorship and the Harvard Corporation approved an overall plan for an advanced school, a concept that had been under discussion for some time. Over the next several months, planning for the school began to take shape; an announcement concerning it was published in the second edition of the 1846-1847 university catalogue. In fact, *as there was no money for the school, all the plans called for restructuring available resources or getting extended duty from the personnel on hand.* It was a cautious move, both fiscally and pedagogically. *In early June 1847, the financial logjam was broken with a major donation by industrialist Abbott Lawrence (1792-1855), who also provided an organizational scheme and a*

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<sup>27</sup> Most such constitutionally-appointed clerics were Congregationalist, whose denominational architecture emphasized local group-based political autonomy (the "congregationalist polity" principle) reflecting distrust of the power centralization characteristic of the oppressive Church of England. Their creedal deference to localized power likely made these particular Harvard Overseers an especially useful socio-political tool to cotton milling magnates fighting to preserve slavery. Their religion's core organizational ethos rendered even those opposed to slavery as a moral matter – at the very least – open to persuasion on whether that *moral* conviction warranted nationwide abolition as a *legal* matter, which necessarily meant recognition of and capitulation to a central federal authority. Agassiz's unabashed willingness to advance a sacred rationale for an inherently profane economic institution, human enslavement, likely made such cognitive dissonance easier to maintain.

*set of priorities. By the end of the academic year 1846-1847, the new institution had been given the name Lawrence Scientific School. Throughout the year, Swiss scientist Louis Agassiz (1807-1873) had been in Boston for his Lowell Lectures, and it was part of the current thinking that he should somehow be attached to Harvard University. In September 1847, Agassiz was chosen professor of zoology and geology in the school. Filling the chair of engineering proved more difficult; it was not until 1849 that Henry Lawrence Eustis arrived from West Point to take up that position.<sup>28</sup>*

In summary, Lowell actively promoted Agassiz and polygenism through prominent public lectures on human origins, while Lawrence “endowed” Harvard to repackage the same White Supremacist tropes as having a “scientific” basis. In what looks conspicuously like a collaborative effort, Lawrence and Lowell broadcast Agassiz’s slavery-friendly thesis to well-heeled public audiences, while ensconcing him in a distinguished academic pulpit from which to preach polygenism to broader academia, his own students, a thoroughly engaged public audience, and a Congress in the throes of its storied “Great Debate” on Slavery.

Harvard welcomed Agassiz as a hero. According to a contemporary science publication:

*After Agassiz had been released from his scientific mission by the Prussian government, he accepted with pleasure the Chair of Zoology and Geology in the Lawrence Scientific School . . . created specially for Agassiz by the founder of the school, Mr. Abbot Lawrence. Agassiz thus gave up all thought of returning to Europe; he placed his activity, his science, and his talents at the disposal of the nation that showed itself so anxious to keep him, and where he would enjoy a social power and a liberty which were hardly possible to the savans of the Old World.<sup>29</sup>*

“Scientific Worthies,” *Nature, A Weekly Illustrated Journal of Science*, Vol. XIX, April 24, 1879, pp. 573-76 (emphasis supplied).<sup>30</sup>

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<sup>28</sup> *Founding of the Lawrence Scientific School at Harvard University, 1846-47: A Study In Writing and History*, Clark A. Elliot, *Archivaria* 38 Fall 1994 (pp. 119-20) (<https://archivaria.ca/index.php/archivaria/article/view/12029/13000>)

<sup>29</sup> The author’s 1879 perspective on Agassiz and his legacy is telling. His comment that Agassiz, upon accepting his position at Harvard, “*would enjoy a social power and a liberty which were hardly possible to the savans of the Old World,*” is especially revealing. The phrase “savans of the Old World” refers to those great scientists, philosophers, and artists who collectively spawned the Renaissance and whose intellectual progeny later brought about the Enlightenment; it’s an ostentatiously flattering comparison, which the author clearly believes Agassiz merited.

<sup>30</sup> We should be very curious indeed whether Harvard’s institutional archives document whether Lowell’s and Lawrence’s economic interests, dependent as they were on the slave trade for cheap cotton to feed their voracious milling empires, motivated Agassiz’s selection as its first director. Notably, when the Civil War precipitated a Southern cotton embargo, Lawrence and Lowell eliminated virtually their entire multi-thousand person workforces and entered the burgeoning cotton trade directly, using their half-empty mills as warehouses to stockpile that ultra-precious commodity. They then agreed with other large milling concerns to fix cotton

Without institutional records reflecting Harvard's internal academic and/or administrative deliberations on the subject, it's unclear how Agassiz's analytic prowess respecting packed snow and dead fish qualified him to pontificate on human origins. Our research suggests that Agassiz hadn't publicly addressed the subject "on the record" until his emigration to the United States and then at the behest of a fabulously wealthy cotton magnate. Few Americans wielded Lowell's clout, which reached back to his distant ancestor, English-born Percival Lowell (1571-1664), who arrived on our shores at the dawn of the New World in 1664 and the Reverend John Lowell (1704-67) who was the first Lowell to graduate Harvard in 1721. Whatever the case, his gilded perch at Harvard coupled with that hallowed institution's massive financial and cultural clout made Agassiz a Godsend to Harvard's biggest benefactors and every American slaveholder.

Agassiz didn't disappoint. He freely expressed revulsion at African-Americans and vehemently opposed any "mixing of the races," which the famous Harvard professor lamented as destructive to Whites, deleterious to humanity generally, and an offense against God's divine order. In a letter to his mother written from a Philadelphia hotel 1846, his disgust at interacting with "negroes" is palpable:

It was in Philadelphia that I first found myself in prolonged contact with negroes; all the domestics in my hotel were men of color. I can scarcely express to you the painful impression that I received, especially since the feeling they inspired in me is contrary to all our ideas about the confraternity of the human type (genre) and the unique origin of our species. But truth before all. Nevertheless, I experienced pity at the sight of this degraded and degenerate race; and their lot inspired compassion in me in thinking that they are really men. Nonetheless, it is impossible for me to repress the feeling that they are not of the same blood as us. In seeing their black face with their thick lips and grimacing teeth, the wool on their head, their bent knees, their elongated hands, their large curved nails, and especially the livid color of the palm of their hands, I could not take my eyes off their face in order to tell them to stay far away. *And when they advanced that hideous hand toward my plate in order to serve me, I wished I were able to depart in order to eat a piece of bread elsewhere, rather than dine with such service. What unhappiness for the white race - to have tied their existence so closely with negroes in certain countries! God preserve us from such contact.*<sup>31</sup>

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prices. All while making *woolen* textiles, which their disenfranchised young "Mill Girls" fashioned into uniforms for Union troops bound for battle against the Confederate States.

<sup>31</sup> *Until Darwin, Science, Human Variety and the Origins of Race*, B. Riccardo Brown, Routledge, 2016 (p. 93) ([https://books.google.com/books?id=xuk5CgAAQBAJ&pg=PA93&lpq=PA93&dq=agassiz+letter+negroes+philadelphia&source=bl&ots=gLZ5jVEMc8&sig=ACfU3UoEUmC\\_rBJdNcBINcVMTGn5B3Q4w&hl=en&sa=X&ved=2ahUKewiGltLbysrIAhUyTt8KHW\\_ICUYO6AEwA3oECAyQAO#v](https://books.google.com/books?id=xuk5CgAAQBAJ&pg=PA93&lpq=PA93&dq=agassiz+letter+negroes+philadelphia&source=bl&ots=gLZ5jVEMc8&sig=ACfU3UoEUmC_rBJdNcBINcVMTGn5B3Q4w&hl=en&sa=X&ved=2ahUKewiGltLbysrIAhUyTt8KHW_ICUYO6AEwA3oECAyQAO#v))

By 1850, Agassiz was the most well-known scientist in America, perhaps the World. He enjoyed public adulation and an almost pop-culture celebrity, viewed through modern eyes. He corresponded regularly with the country's preeminent literary figures and New World philosophers. The great American Romantic poet and author Henry Wadsworth Longfellow (1807-1882) wrote verses celebrating Agassiz's fiftieth birthday in 1857.<sup>32</sup> Samuel Langhorne Clemens ("Mark Twain" [1835-1910]) famously quipped on Agassiz's prescription that "authors eat fish, because the phosphorus in it makes brains[.]"<sup>33</sup> Agassiz not infrequently fished and corresponded with Henry David Thoreau, who sent the Harvard scientist fauna and flora specimens from Walden Pond.<sup>34</sup> Upon his departure on a multi-month expedition to Brazil, Thoreau's mentor, Oliver Wendell Holmes, wrote a lengthy saga-like panegyric entitled "A Farwell to Agassiz," which portrays Agassiz as a national treasure. The celebrated Quaker poet John Greenleaf Whittier (1807-1892) penned "The Prayer of Agassiz" for recitation at the Harvard professor's funeral, which portrays him as a veritable demi-God for reconciling "science" with Puritan Christian dogma.<sup>35</sup> A 75-page biographical memoir celebrating Agassiz was read aloud before the National Academy of Sciences in 1877. 60-years after Agassiz's death, ex-patriate American poet, anti-Semite and Italo-fascist sympathizer, Ezra Pound, opened his 1934 literary criticism primer *ABC of Reading* with the so-called "Parable of the Sunfish", which recounts Agassiz's observational approach to teaching science and recommends reading, especially poetry, in a similarly methodical manner.<sup>36</sup> There are mountains, lakes, towns, counties, buildings named for

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[=onepage&q=agassiz%20letter%20negroes%20philadelphia&f=false](#)); see also *Imagining the Black Female Body: Reconciling Image in Print and Visual Culture*, Carol Henderson, Palgrave Macmillan 2010 (pp. 32-33) (supplied) (<https://books.google.com/books?id=vqTGAAAQBAJ&pg=PT42&lpg=PT42&dq=agassiz+letter+negroes+philadelphia+gould&source=bl&ots=ots6R-aWfp&sig=ACfU3U1-N1TGdpaYUcPkmAVc3gmQSYrxHA&hl=en&sa=X&ved=2ahUKEwirhPC19MzlAhWEMd8KHXdBAmwO6AEwChOECAyQAQ#v=onepage&q=agassiz%20letter%20negroes%20philadelphia%20gould&f=false>)

<sup>32</sup> [https://www.hwlongfellow.org/poems\\_poem.php?pid=141](https://www.hwlongfellow.org/poems_poem.php?pid=141)

<sup>33</sup> <https://www.quotetab.com/quote/by-mark-twain/agassiz-does-recommend-authors-to-eat-fish-because-the-phosphorus-in-it-makes-br?source=whales#tztGV1JMf1Xqj1Lz.97>

<sup>34</sup> Loius Agassiz and Men of Letters, *The Scientific Monthly*, November 1947, p. 428, James V, Teller, pub, by the American Association for the Advancement of Science; <https://www.jstor.org/stable/19467?seq=1>

<sup>35</sup> <https://archive.org/details/prayeragassizapOoparsgoog/page/n5>

<sup>36</sup> [Pound, Ezra \(2010\). \*ABC of Reading\*. New York: New Directions. ISBN 978-0-8112-1893-1.](#)

Agassiz across the planet. A moon crater and other celestial bodies bear his name. As do many extinct and extant animal species, especially in Ichthyology.

It's surely no coincidence that, at the very historical moment our Thirty-First Congress (March 4, 1849 – March 4, 1851) began conducting its famed “Great Debate” on slavery’s legal future in America, Harvard dispatched Agassiz from Cambridge to rural South Carolina to capture Renty’s image (three-weeks by horse-drawn carriage or a week by sailing ship and then several days overland – and back again). Agassiz lectured extensively on his multi-month trip and drew especially enthusiastic crowds (and generous speaking fees) in Charleston, South Carolina where forty percent (40%) of the African-born persons enslaved in America first made landfall here, were paraded in chains before prospective purchasers, and auctioned as livestock.<sup>37</sup>

At virtually the same historical moment, Agassiz penned his innocuously titled “Geographical Distribution of Animals” in the *Christian Examiner and Religious Miscellany*, “a Boston Unitarian journal of liberal religious views” published by another very influential Harvard alumnus, George Palmer Putnam (1814-1872).<sup>38</sup> In this archetypical polygenist work, Agassiz (while wearing his theologian’s hat) opines that “Mosaic” (Old Testament) accounts didn’t support belief in a “common center of origin to all living things on earth” as the planet’s geography prohibited a solitary genesis point (when considered while wearing his “scientist” hat). Rather, diverse flora and fauna originated in different locations from which “organized beings were afterwards diffused over wider areas.”<sup>39</sup> This deft blending of the sacred and profane no doubt made it easier

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<sup>37</sup> Few Harvard-educated historians would disagree that as few as sixty in a hundred such captive West Africans survived the treacherous Middle Passage and those brutal intermediate prisons where they were interred *en route*. The remaining forty-percent succumbed to starvation and disease, were murdered outright by their captors, or chose suicide to escape a living death. Those poor souls resilient enough to survive this horrific journey eventually were separated from their loved ones, stripped naked, chained neck and foot, and paraded onto display stands in the (not so new) New World’s burgeoning slave markets, and delivered into perpetual bondage at the drop of an auctioneer’s hammer. Their estimates vary, but most African diaspora scholars concur that in the period beginning when Christopher Columbus stumbled on what became known as the “West Indies” in 1492 and official termination of the trans-Atlantic slave trade by federal legislation in 1808, no fewer than 10 million and as many as 15 million native Africans were trafficked in this manner. Between 375,000 and 500,000 reached our shores. The remaining millions vanished into Spanish and Portuguese controlled Central and South America.

<sup>38</sup> <http://people.wku.edu/charles.smith/biogeog/AGAS1850.htm>.

<sup>39</sup> Agassiz, “Geographical Distribution of Animals,” *The Christian Examiner and Religious Miscellany* (Fourth Series, Volume 13, March 1850) 181-204.  
<https://books.google.com/books?id=5JkQAAAAYAAJ&pg=RA1-PA180&lpg=RA1-PA180&dq=Christian+Examiner+and+Religious+Miscellany+march+1850&source=bl&ots=dIuEnLebGJ&sig=>

even for a “religious” person to rationalize a predisposition to view non-White persons as “the other,” not just legally, but by their very divine essence. A biblical “hook” on which to hang a morally bankrupt, functionally genocidal, trade in human flesh.

We believe that Harvard sent Agassiz to South Carolina at this critical juncture in hopes that his “scientific examination” of any (presumably more “pure-blooded”) African-born slave(s) (versus those born here to diverse prior-trafficked generations) still laboring there would help bolster his polygenism-based logic for slavery.<sup>40</sup> More to the point in defining Harvard’s motives, it did so just as federal legislators debated what role human bondage would play in our rapidly expanding country’s future. Speaking through its international superstar celebrity scientist, Harvard (under *de facto* and *de jure* Massachusetts State government control) sought to influence that debate, inside and outside the political sphere, using tautological pseudo-science with a distinctly White supremacist motif. Bearing illustrious Harvard’s standard before him, Agassiz preached this “veritas” to many thousands and quickly became a cultural icon here. And throughout the international scientific community.

In assessing Agassiz’s broader impact on science curricula at Harvard and elsewhere, including those academic institutions where his students settled and taught subsequent generations, it’s worthwhile to examine briefly just three of his most prominent student-acolytes: (1) *Nathaniel Southgate Shaler* (1841-1906) became Harvard’s Dean of the Sciences and advocated extensively on polygenist principles linking geography and climate with more or less “fit societies” defined in Agassizian racial terms. In his article entitled “The Negro Problem,” Shaler described freed African-American slaves as “children lost in the wood, needing the old protection of the strong mastering hand,” whose “animal nature” made American slavery “infinitely the

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[ACfU3UoOpgT2XyzJFcWmyyo6yOFtdoyDjA&hl=en&sa=X&ved=2ahUKEwjloJPkn43lAhXiYd8KHylfChAQ6AEwAnoECAkQAO#v=onepage&q=Christian%20Examiner%20and%20Religious%20Miscellany%20march%201850&f=false](https://www.christianexaminer.com/1850/march/religious-miscellany/one-page-essay-on-the-negro-problem)

<sup>40</sup> In assessing motive, it’s also worth noting that Agassiz married Elizabeth Cabot (1822-1907) in 1849 (daughter of Lowell’s wife Susanna Cabot), whose grandfather – Thomas Handsayd Perkins (1764-1854) – built an enormous family fortune in the Haitian-African slave and opium trades. [Memoir of Thomas Handsayd Perkins: Containing Extracts from His Diaries and Letters](#) (Cary, Thomas Greaves (1856)) Little, Brown & Company (Retrieved October 27, 2017; <https://books.google.com/books?id=QKwpAAAAYAAJ>). This marriage made Agassiz a son-in-law to among our country’s largest cotton-milling industrial and slave-trading tycoons and a principal Harvard benefactor and Overseer, whose extended family obviously had a strong incentive to preserve slavery.



mildest and most decent system of slavery that ever existed[.]” *The Negro Problem*, Atlantic Monthly, November 1884 (pp.697-98); (2) *Joseph LeConte* (1823-1901) studied under Agassiz at Harvard and after graduation accompanied him on expedition to study Florida reef systems. Beginning in 1852, LeConte taught “natural sciences” at colleges in Georgia and South Carolina, and during the Civil War supervised the Confederacy’s explosive armaments works. In his autobiography, published in 1903, LeConte declared the “sudden enfranchisement of the negro without qualification [as] the greatest political crime ever perpetrated by any people”

(<https://docsouth.unc.edu/fpn/leconte/leconte.html>); and (3) *David Starr Jordan* (1851-1931), who studied under Agassiz at his Penikese Island Scientific School in Buzzards Bay, wrote and lectured extensively on Agassiz (e.g., *Agassiz at Penikese*, The Popular Science Monthly, April 1892 (pp.721-29)), became Stanford University’s first president in 1891 (1891-1913), wrote a multi-part “scientific” treatise entitled “The Blood of the Nation: A Study in the Decay of Races by the Survival of the Unfit,” chaired the first “Committee on Eugenics of the American Breeder’s Association,” and founded “The Human Betterment Foundation” advocating forced sterilization of the “unfit” as Jordan defined that odious term. His Agassiz-inspired eugenics (from Greek “eugenes” meaning “well-born”) wrought untold horrors in this country through involuntary institutionalization and forced sterilization of over 60,000 Americans of all races. While it’s a stretch to blame Agassiz proximately, his doctrinal influence and White supremacist pre-conceptions are indisputably evident in such genocidal practices. Agassiz acolyte David Starr Jordan, who spawned our horrific domestic eugenics movement, is commonly credited with having inspired mid-twentieth century racial codes in Hitler’s Germany and elsewhere throughout his abominable Reich.

#### D. AGASSIZ VERSUS DARWIN

Agassiz quickly rose to international prominence as the principal counter-theorist to Charles Darwin.<sup>41</sup> Although the complexity and nuance of his landmark scientific

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<sup>41</sup> Darwin was born into a family vehemently opposed to slavery. His grandfathers, the humanist and evolutionist Erasmus Darwin and Josiah Wedgwood, the Unitarian pottery magnate, financed anti-slavery lobbying in support of the abolitionist crusade spearheaded in the British Parliament by evangelical Christian MP, William Wilberforce. Their efforts produced the Slave Trade Act of 1807 (making it illegal for British ships to carry slaves) and eventually resulted in the Slavery Abolition Act of 1833 (making slavery illegal throughout

labors aren't germane here, it's sufficient to state that Darwin, a doctrinaire abolitionist, theorized all human beings derived from a single common ancestor ("monogenism"). In a nutshell, Darwin posited that physical differences between the so-called "races" reflected, in essence, a fortuitous accumulation of those random mutations that proved themselves "successful" by sustaining human life in particular settings. The resulting non-substantive (essentially *cosmetic*) physical dissimilarities among Earth's scattered human populations didn't reflect the co-emergence of separate qualitatively-different sub-species, as Agassiz argued in service of Harvard's slavery-friendly bias.

Rather, all humans arose from a common ancestor, but "evolved" to manifest differences in outward appearance precipitated by chance in (more or less) "successful adaptations" to meet challenges (or to exploit potential advantages) in their at once "unique," but always thus "evolving," physical worlds. Those modifications in turn accreted and coalesced over geological time into those diverse physical characteristics that appear to distinguish the so-called "races." But our human species – in all its colors and contrasts – necessarily emerged in its essence (literally and figuratively) before some random mutation proved "advantageous" in response to some eco-systemic challenge or other environmental differentiation. We are all – in our fundamental make-up – the same and display superficial differences spawned by aggregated mutations and socio-cultural adaptations that survived by promoting self-propagation.

Under Darwin's view, race was a socio-cultural construct and political device – not an empirically distinct classification that warranted viewing one human being differently from another, morally or at law. Today, exactly *zero* apolitical mainstream evolutionary biologists and anthropogenists disagree that: (1) Darwin got it right; and (2) Agassiz was a showman<sup>42</sup> and a charlatan, whose long-discredited pseudo-science helped to spawn America's catastrophic nineteenth-century eugenics movement, its genocidal Jim Crow laws, and twentieth-century European fascist racial codes.

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the British Empire). *Darwin's Sacred Cause: Race, Slavery and the Quest for Human Origins*, Desmond and Moore, University of Chicago Press, 2011.

<sup>42</sup> In fact, Agassiz was – first and foremost, and again, quite *literally* – a Barnum-like showman. Herman Melville published "Moby Dick" in 1851. In October 1860, P.T. Barnum called on Harvard's esteemed, internationally renowned zoologist to certify the authenticity of two "white whales" Barnum claimed to have captured in the Saint Lawrence channel. Agassiz obliged. Barnum publicized Agassiz's endorsement far and wide, which brought credibility to his sideshows. History records that Barnum called on Agassiz repeatedly to certify his patently fraudulent public spectacles, which no doubt greatly enriched them both.

We find it interesting that Agassiz attended medical school at the Ludwig Maximilian University at Munich (“LMU”) and had become among its most famous alumni by the time young Josef Mengele began his anthropology studies there. Mengele soon would become known as “der todesengel” – the Angel of Death – for his gruesome, pathologically sadistic, experiments on captive Jews awaiting slaughter at the murder factory known as the Auschwitz-Birkenau concentration camp. LMU was among the first German educational institutions: (1) to dismiss Jewish or other “politically suspect” professors from their posts; and (2) to appoint a so-called Führer-Rektor, who enforced Chancellor Hitler’s pseudo-scientific polygenist Aryan ideology in staff selection, instruction protocols and student admissions.

Harvard University administration during the 1930s, led by President James Bryant Conant, ignored numerous opportunities to take a principled stand against the Hitler regime and its antisemitic outrages, and contributed to Nazi Germany's efforts to improve its image in the West. Its lack of concern about Nazi antisemitism was shared by many influential Harvard alumni and student leaders. It warmly welcoming Nazi Regime leaders to the Harvard campus, inviting them to prestigious, high-profile social events, and striving to build friendly relations with thoroughly Nazified universities in Germany, while denouncing those who protested against these actions, Harvard's administration and many of its student leaders offered important encouragement to the Hitler regime as it intensified its persecution of Jews and expanded its military strength.

In our view, there’s no difference in principle between Harvard’s insistence that it holds superior title to the Renty-Delia Slave Images and Mengele claiming title to photos he took of his vivisection and other horrific experiments on imprisoned Jews. Both Agassiz and Mengele claimed a “scientific” basis for capturing and using such images. Their “subjects” were illegally detained persons, forced to participate, who were powerless to prevent or otherwise protest their photographic capture. Both Mengele and Agassiz viewed their subjects as “sub-human” animals without legal rights.<sup>43</sup>

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<sup>43</sup> The thematic harmony between Hitler’s anti-Darwinism and Harvard’s Agassizian polygenism is striking. It’s no coincidence, I think, that Harvard has a well-documented history of anti-semitism. <https://jewishjournal.com/analysis/296227/anti-semitism-no-stranger-to-harvard/>. Among Hitler’s earliest acolytes and closest confidants, his chief propagandist, Ernst Franz Sedgwick Hanfstaengl, a Harvard alumnus (1909) and Hasty Pudding Club Pianist, was hosted by Harvard professor Louis Agassiz Shaw (Agassiz’s great grandson) when he visited the United States in June 1934 – a year after Hitler rode the polygenist anti-Semitic rhetoric in his national socialist manifesto, *Mein Kampf*, to Germany’s chancellorship. Notably, while

Presumably, Harvard will not hazard to argue otherwise in its defense against Ms. Lanier's claims here – but it did *precisely that at perhaps the single most fateful moment* in our nation's history.

In the critical decade before Southern Secession spawned our Civil War in Spring 1861, two opposing scientific camps emerged in America's increasingly public, and fundamentally intractable, debate over the African slave-trade. Harvard's academic champion, the eminent Professor Agassiz, defended slavery (at least implicitly) or by logical reduction excused the practice as a moral, even humane, institution whose logic became self-evident when one examined the different races through his proprietary "scientific" lens and contrived polygenist animal hierarchies. Agassiz vehemently opposed any "mixing of the races," which he viewed as destructive to Whites, deleterious to humanity generally, and an offense against God's divine law.<sup>44</sup>

Using the staged and stolen image of naked African slaves to "prove" his theory, Agassiz argued that race wasn't the skin-deep byproduct of a chaotic progression measured in eons, but – precisely the opposite – it was a point-of-origin documented in

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comfortably ensconced in Agassiz's house on the Harvard campus, Hanfstaengl declined a request of the Joint Anglo-American Committee on Inquiry regarding the problems of European Jewry and Palestine, to answer questions about Nazi atrocities against the mentally disabled, the physically challenged, homosexuals, and Roma population. Hitler's henchmen had just opened the first *Konzentrationslager* (Concentration Camp) at Dachau in Upper Bavaria on March 22, 1933. Over 32,000 Jews and other "undesirables" were murdered there before Germany surrendered to Allied Forces in May 1945. According to a contemporary Jewish cultural publication, The Jewish Telegraphic Agency, Hanfstaengl demurred stating that he would occupy himself with aquatic sports before he sails for Germany and his dear friend Adolf[.]”  
<https://www.jta.org/1934/06/26/archive/putzy-refuses-to-aid-das-vaterland-in-nazi-atrocity-inquiry-here>. Hanfstaengl reportedly attended a tea in his honor at Harvard President James Bryant Conant's home and was feted by the university's most prominent alumni. Harvard police tore down anti-Nazi posters when demonstrators, whom [president] Conant labeled "ridiculous," descended upon Cambridge to protest Hanfstaengl's visit. Most offensive, however, was that The Crimson actually recommended Hanfstaengl for an honorary degree and lauded his German Fatherland as a "great and proud nation." <https://yaledailynews.com/blog/2004/11/29/for-harvard-writing-off-nazi-link-is-a-poor-move/>. In 1936, after the passage of the Nuremberg laws and the eviction of Jewish professors and students from German universities (like LMU), Harvard sent representatives to attend the 550th anniversary celebration of the University of Heidelberg (a Nazi book-burning site), joining arms with Nazi propaganda minister Joseph Goebbels and Gestapo Chief Heinrich Himmler. That same year, Albert Einstein refused to attend Harvard's tercentenary because of the university's pro-Nazi sentiments and conduct.  
<https://www.chicagotribune.com/news/ct-xpm-2004-11-30-0411300178-story.html>; see also <https://www.historynet.com/hitlers-harvard-man-ernst-hanfstaengl.htm>;

<sup>44</sup> A succinct summary of the polygenist view and its development in American scientific circles is contained in "Blood Will Tell: Scientific Racism and the Legal Prohibitions Against Miscegenation," Michigan Journal of Race and Law (2000 Keith E. Sealing [Volume 5, Issue 2, pp. 576-82]). It contains an excellent discussion of how American Scientists – Agassiz principal among them – blended their "analysis" with religious imagery and scriptural references. <https://www.history.ucsb.edu/wp-content/uploads/History-of-the-Human-Sciences-2013-Keel-3-32.pdf>

the Christian Bible's creation narrative (Genesis 2:4-3:24), which presumed a divine hierarchy characterized by fixity in time and place. He argued that geographic location and observable physical trait groupings (e.g., skin color, skull shape, hair texture, bodily proportions) reflected empirical, qualitative distinctions as among different human subspecies. In Agassiz's view, God had formed only Adam and Eve in His image as the proto-primogenitors of a strictly White race that would preside over Earth and its Lesser Animals, a category that included non-Whites.

Although divine handiwork, the non-White races were "by God," but not "of Him," so to speak and belonged, therefore, to a lower order of the Animal Kingdom in whose intricacies Agassiz was a world-renowned expert. Race wasn't a cultural construct, but a Holy Order dictated by God. Mixing "science" with the Old Testament's "Creation" narrative, Harvard's Agassiz argued that Earth's various non-White races descended from different biological ancestors created by God *after* He formed [White] Man (Genesis 1:26-28), which necessarily rendered them less intelligent and capable ("polygenism"). Conveniently for Agassiz, the very same physical trait sets that he himself curated to identify and differentiate between the races, as he'd delineated them, also operated as a tautological validation of his theory. It was from inception merely a repackaging of late 18<sup>th</sup> Century phrenology pseudo-science, akin to judging one's psychological attributes from bumps and patterns in her skull surface. Perhaps not coincidentally, phrenology's popularity surged a bit during Agassiz's reign at Harvard and its decidedly deterministic bent recollects polygenism.

#### E. PRESERVING AND EXPANDING SLAVERY

Speaking through Harvard's august Franco-Swiss celebrity scientist, Lowell and Lawrence, those fabulously-wealthy Massachusetts-based textile magnates, sought not only to preserve slavery, but to *expand* it. Improvements to Massachusetts native Eli Whitney's first "gin" (short for "engine" patented in 1794) caused American raw cotton production to increase exponentially – it *doubly* every decade until the Civil War began. By 1840, the United States produced half of the World's cotton cloth and a higher quality fiber overall. Fones McCarthy received a patent for a so-called "Smooth Cylinder Cotton-gin" that same year and marketed it for use in de-seeding both short-staple and

extra-long staple cotton. It cleaned raw fiber several times faster than older gins, and, when powered by one horse, produced 150 to 200 pounds of de-seeded “lint” daily.

By 1860, over fifty percent (50%) of the country’s cotton cloth manufacturing and seventy-five percent (75%) of the country’s over five-million spindles and looms resided in New England. In Massachusetts alone, cotton-milling magnates like Lawrence and Lowell controlled thirty-percent (30%) of the industry.<sup>45</sup> Their enormous water-powered textile complexes built on the Merrimack and other great Massachusetts waterways attest to the industry’s economic power and socio-political influence. They employed tens-of-thousands, whose ranks swelled with desperate, starving Irish immigrants, who arrived weekly to escape the Great Potato Famine in 1845-49.

These voracious, pre-regulatory capitalists needed as much slave-picked raw cotton as America could produce. Various mechanical cotton pickers came and went, but *not until 1944* did International Harvester (then McCormick-Deering) introduce the first commercially successful iteration. Human labor, made artificially cheap first by human bondage and then by “legally” compelled or low wage unskilled labor, was essential to the industry's survival for *a full century* after Harvard deployed Agassiz to justify slavery through science.

By financing and promoting Agassiz's "scientific" research, the venerated Harvard deliberately and in service of its own economic interests placed its politically weighty imprimatur on his polygenist worldview. The Renty-Delia Slave Images became a tool that Agassiz – Harvard’s academic emissary – used to rationalize human enslavement. In so doing, Harvard – speaking through Agassiz – rejected Darwin's egalitarian abolitionism and embraced a "faith-based science" (indisputably a direct precursor to today’s intellectually bankrupt, yet disturbingly ubiquitous, Intelligent

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<sup>45</sup> Their operations were massive. By 1850, Lowell's population was 33,000, making it the second largest city in Massachusetts and America's largest industrial center. The town's 5.6 mile long canal system produced 10,000 horsepower provided to ten corporations with a total of forty mills. Ten thousand workers used an equal number of looms fed by 320,000 spindles. The mills produced 50,000 miles of cloth annually. Hyperlink: [https://en.wikipedia.org/wiki/History\\_of\\_Lowell,\\_Massachusetts](https://en.wikipedia.org/wiki/History_of_Lowell,_Massachusetts)

Design and Creationism advocacy and “educational“ enclaves<sup>46</sup> where Adam and Eve were White and "Black Africans" merely a related species.<sup>47</sup>

Between the Nation’s founding and 1850, slave-dependent American business concerns had watched abolitionism evolve from narrow religious moralizing on human bondage into a seemingly irresistible cultural force with contagious political appeal. Whether tied to re-examined Enlightenment principles and/or some religious or other moral conviction, that emerging force manifested itself in louder and louder calls for an altogether slavery-free Union. The contemporary Congressional Record is thick with heartrending appeals submitted by entire New England towns demanding nationwide abolition and a prohibition against slavery’s expansion West.

Congress was in the balance. Behind the ailing John Calhoun's histrionics on the Senate floor in March 1850 was a well-founded fear that abolitionism's political ascendancy in the industrialized North and newly admitted States would culminate in a Congressional supermajority opposed to slavery.<sup>48</sup> The Slave States feared becoming locked into a dwindling political minority as new national territories sought admission to the Union under proposed State Constitutions barring slavery; California is a prime example as are other States derived from enormous territorial spoils ceded to a victorious America by a vanquished Mexico just two years earlier in 1848.

Eventually, the slavery-dependent States concluded, a veto-proof abolitionist contingent would emerge and legislate slavery into oblivion Union-wide, and thereby: (1) destroy the collective economies of the overwhelmingly agrarian Slave States; and (2) impose enormous, theretofore artificially deflated, labor and raw material costs on

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<sup>46</sup> Agassiz is still revered among these anti-Darwinist groups. <https://www.icr.org/article/louis-agassiz-anti-darwinist-harvard>.

<sup>47</sup> The broader cultural influence Agassiz’s “science-based” White supremacist curriculum had on this Nation’s racial views and relations is impossible to calculate in any meaningful way. It’s worth noting, however that: (1) Agassiz occupied his chair at Harvard until his death in 1873 (eight years after passage of the Thirteenth Amendment); (2) he founded Harvard’s White supremacist polygenism-themed “Museum of Comparative Zoology” in 1859 (the same year his professional nemesis, the great Charles Darwin, published his epoch-shaping *On the Origin of Species By Means of Natural Selection* based in egalitarian monogenism); (3) Agassiz is routinely described as the “Father of American Science;” and (4) thousands of so-called “Agassiz Associations” emerged throughout the United States in the late nineteenth century and many survived well into the twentieth, which were nominally dedicated to observational studies and classifications of the “natural world,” as defined by Agassiz himself. “History of the Agassiz Association,” *Science* magazine, Harlan H. Ballard, principal of the Lenox Academy in Lenox, Massachusetts (vol. 9, no. 208, pp. 93-96) published January 28, 1887 by the American Association for the Advancement of Science.

<sup>48</sup> See <https://memory.loc.gov/ammem/amlaw/lwcglink.html#anchor31>



cotton-dependent, predominantly Northern, textile concerns. As more slavery-resistant populations in recently acquired federal territories and possessions sought and achieved Statehood, their newly-minted federal legislative representatives would join forces with existing Congressional abolitionists and inexorably deprive the almost entirely agriculture-dependent South of its economic lifeblood – human labor purchased once and maintained by force and food.

In those Americans, particularly legislators and prominent cultural figures, who identified nominally as anti-slavery (albeit not necessarily *abolitionist*), slaveholders and slavery-dependent business tycoons (like Lawrence and Lowell) perceived an opportunity to fortify their political and economic ranks. By this perilous moment in American history, the "Slavery Question" had divided the country's dominant Protestant denominations and even precipitated permanent schisms in some.<sup>49</sup>

What they needed, the Southern States and Harvard understood, was a successful appeal to core principles, whose theoretical foundations lay more in generic Biblical imagery than in authentic biological, political and economic realities. They needed to persuade – or perhaps merely to confound – cultural principals falling into two basic categories: Namely, those Americans: (1) to whom universal emancipation might appeal in principle, but whose economic and/or political fortunes depended in some measure on preserving slavery; and (2) whose otherwise slavery-neutral convictions might render them susceptible to the White supremacist motif that so clearly animated Agassiz's polygenist world-view.

So, they embraced and promoted Agassiz, who blended his tautological pseudo-science with a race-based, sectarian (nominally "Christian") creation narrative to "prove" that non-Whites weren't strictly "Man" and, therefore, were appropriate objects of a slave-trade not unlike those recounted in the Old Testament. Chattel slavery was a

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<sup>49</sup> The Presbyterian Church split in 1838 and one faction, the pro-slavery United Synod of the Presbyterian Church eventually dubbed itself the Presbyterian Church of the Confederate States of America. The Methodist Episcopal Church split in 1860 over rejection by Southern congregations of the religion's General Conference declaration that slavery as "contrary to laws of God and nature" and its adoption of nationwide abolition as official policy. Data compiled by the Library of Congress indicates that over 80% of our country's population attended some Christian church regularly during this decisive antebellum interval. That's well over twice the number who today report weekly church attendance. Moreover, legal abolitionism's recent triumph in Britain's parliament and growing momentum toward emancipation throughout the "civilized world" dominated national conversations. Harvard deployed Agassiz into this turbulent public discourse in hopes that "scientific justification" cloaked in familiar religious rhetoric might halt abolitionism's progress in America.

“state of nature” suited to non-Whites over whom God had granted Adam and Eve dominion at Creation. Put differently, those determined to preserve slavery sought to rationalize that abhorrent crime against humanity as the benevolent domestication of a lesser creature, whose inferiority could be proven through scientific examination.

This insidious blend of racist pseudo-science and sacred Christian texts coalesced into an anti-Darwinist movement called “The American School,” which Agassiz – together with Josiah Clark Nott (1804-1873), George R. Gliddon (1809–57), and Samuel George Morton (1799-1851) among others – spearheaded in academia and popular culture. Nott, a physician by training, used primitive anthropological science to promote polygenism. In 1844, Nott published *Two Lectures on the Natural History of the Caucasian and Negro Races*.<sup>50</sup> He reached a wider audience in collaboration with Gliddon when they published *Types of Mankind* 1854, which ran through ten editions.<sup>51</sup>

In this absolutely unique historical context, the Southern “Lords of the Lash” and Northern “Lords of the Loom” fought to rationalize African bondage by enlisting new-fangled “science” to validate the very cultural and religious vanities that spawned systematized human chattel slavery in earliest antiquity. Harvard – speaking through its superstar academician, Agassiz – positioned itself as among the most prominent and “eloquent” advocates for preserving slavery in the United States.<sup>52</sup>

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<sup>50</sup> See <https://archive.org/details/twolecturesonnao0nottgoog/page/n5>.

<sup>51</sup> See <https://archive.org/details/typesmankindoreo1pattgoog/page/n10>. *Types of Mankind* includes contributions by Agassiz including a so-called “Sketch of the Natural Provinces of the Animal World and Their Relation to the Different Types of Man,” wherein he posits that different geographic areas of the world produced distinct human and animal types (<https://www.naturepl.com/stock-photo-tableau-to-accompany-professor-agassiz-opening-sketch-on-the-image01388344.html>). In 1857, Nott and Gliddon co-edited a second White supremacist screed entitled *Indigenous Races of the Earth* (<https://archive.org/stream/indigenouss001nott#page/n13/mode/2up>) in which they expanded upon *Types of Mankind* by linking anthropology and “scientific” race-related studies to “prove” a natural hierarchy among the races. Agassiz contributed to that racist tome as well.

<sup>52</sup> Staunch abolitionist and 1830 Harvard alumnus Charles Sumner, a Massachusetts Senator, coined the “Lords” phraseology in remarks delivered to that body on May 19, 1856. In his famous “Crime Against Kansas” speech, Sumner attacked the unholy alliance between Northern cotton industrialists (Lords of the Loom) and their cotton producing Southern counterparts (Lords of the Lash), calling it “an unhallowed union . . . between the cotton-planters and flesh-mongers of Louisiana and Mississippi and the cotton-spinners and traffickers of New England — between the lords of the lash and the lords of the loom.” He vociferously opposed slavery’s expansion into the Kansas Territory, which became a State just 90-days before South Carolina ignited our devastating Civil War by bombarding the federal outpost at Fort Sumter on April 12, 1861. Senator *Sumner* was rewarded three days after his speech – on May 22, 1856 – with a near-fatal beating administered on the Senate floor by a cane-wielding South Carolina Representative named Preston Brooks. Brooks was related to South Carolina Senator Andrew Butler, whom Sumner had singled-out for special opprobrium in his abolitionist “Lords” speech. Sumner’s assailant, Brooks, survived a House censure resolution, resigned briefly, but was immediately reelected in 1857. In reference to the attack, the *Richmond Enquirer* wrote: “We consider the act

The celebrated Great Slavery Debates conducted in Congress began producing their most salient rhetoric in early March 1850,<sup>53</sup> which featured soaring exchanges between Daniel Webster (nominally a moderate Whig) and a terminally-ill John C. Calhoun (1782 – March 31, 1850),<sup>54</sup> himself a South Carolina slaveholder. Arguably, Harvard’s wicked enterprise succeeded when Congress passed the Fugitive Slave Act on September 18, 1850 – a Faustian bargain to which Webster capitulated in vain hope it might discourage Southern secession. That indelible stain on our federal legislative history: (1) *expressly compelled* not only government officials in non-slave States *but even their rank-and-file citizens* to engage pro-actively in the physical kidnapping of any “runaway” slave they encountered; (2) punished any free person who attempted to assist any escaped slave in avoiding abduction; and (3) eventually “replevined” each captured slave to his “master” in a civil property proceeding. Ironically, *replevin* is a core claim here and its former use in enforcing slave-master relationships eventually triggered the judicial abolition of slavery in Massachusetts in 1783.<sup>55</sup>

President Millard Filmore’s (1800-1874) slave-owning Secretary of State, Henry Clay (1777-1852), designed what became known as the “Great Compromise of 1850” to forestall the Southern secession movement led by slavery’s most vociferous Congressional champion, Calhoun, who died on March 31, 1850 six-months before passage of the Act and just four-months before Zachary Taylor (1784-1850) died,

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good in conception, better in execution, and best of all in consequences. These vulgar abolitionists in the Senate must be *lashed* into submission.” The University of Virginia’s Jefferson Literary and Debating Society sent Brooks a new gold-headed cane to replace the one he broke over Sumner’s head, which it had inscribed “Hit Him Again.” It’s reputed that Southern lawmakers made rings out of the original cane’s remains, which they wore around their necks in solidarity with slave-owner Brooks.

<sup>53</sup> <https://memory.loc.gov/cgi-bin/ampage?collId=llcg&fileName=022/llcg022.db&recNum=88>

<sup>54</sup> The broader cultural influence Agassiz’s “science-based” White supremacist curriculum had on this Nation’s racial views and relations is impossible to calculate in any meaningful way. It’s worth noting, however that: (1) Agassiz occupied his chair at Harvard until his death in 1873 (eight years after passage of the Thirteenth Amendment); (2) he founded Harvard’s White supremacist polygenism-themed “Museum of Comparative Zoology” in 1859 (the same year his professional nemesis, the great Charles Darwin, published his epoch-shaping *On the Origin of Species By Means of Natural Selection* based in egalitarian monogenism); (3) Agassiz is routinely described as the “Father of American Science;” and (4) thousands of so-called “Agassiz Associations” emerged throughout the United States in the late nineteenth century and many survived well into the twentieth, which were nominally dedicated to observational studies and classifications of the “natural world,” as defined by Agassiz himself. “History of the Agassiz Association,” *Science* magazine, Harlan H. Ballard, principal of the Lenox Academy in Lenox, Massachusetts (vol. 9, no. 208, pp. 93-96) published January 28, 1887 by the American Association for the Advancement of Science.

<sup>55</sup> The legal term “replevin” as used here derives from the Latin verb *replegiare*, which means to redeem a thing detained or taken by another.

America's last President to own slaves. Dred Scott v. Sandford, 60 U.S. (19 How.) 393 (1857) followed, wherein our Supreme Court held that an escaped slave present in a Free State or Territory remained chattel and, therefore, lacked even fundamental human rights.<sup>56</sup> A month after the meatgrinder that was Gettysburg and one month before Lincoln delivered his timeless Address revering those "*honored dead*" from whom he urged Americans to commit "*increased devotion to that cause for which they gave the last full measure of devotion — that we here highly resolve that these dead shall not have died in vain — that this nation, under God, shall have a new birth of freedom — and that government of the people, by the people, for the people, shall not perish from the earth,*" Harvard's Agassiz managed to slur both African-Americans and the entire Mexican people by claiming that abolitionists would "Mexicanize the country" by allowing racial intermarriage:

Conceive for a moment the difference it would make in future ages for the prospect of republican institutions and our civilization generally, if instead of the manly population descended from cognate nations, the United States should hereafter be inhabited by the effeminate progeny of mixed races, half Indian, half negro, sprinkled with white blood.

Louis Agassiz to Samuel Gridley Howe (August 10, 1863) Agassiz Papers (152); quoted by Louis Menand in *Morton, Agassiz and the origins of Scientific Racism in the United States*, *The Journal of Blacks in Higher Education*, No. 34, pp.110-113 (2001). His utter disdain for non-Whites whom he deemed "lesser than" couldn't have been clearer.

The Renty-Delia Slave Images are not merely important historical artifacts, but utterly unique American cultural icons – literally snapshots of a morally bankrupt past taken moments before a brutal Civil War that killed two-percent of our nation's 32-million (overwhelmingly male) citizens. That translates to over six-million deaths extrapolated from our current population. The sheer brutality was unimaginable by modern standards. Think for a moment about a war *on our native soil*, lasting four long years – fought on battlefields from Pennsylvania to Florida, Missouri to Texas, and as

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<sup>56</sup> President Andrew Jackson appointed wealthy slave-owner Roger Brooke Taney (1777-1864) as Chief Justice of the United States Supreme Court in 1836; a post he occupied until his death at age 87. Taney wrote the *Dredd Scott* decision in which he described African-Americans as "beings of an inferior order, and altogether unfit to associate with the white race . . . and so far inferior that they had no rights which the white man was bound to respect." The 7-2 majority decision declared that: (1) African-Americans, whether free or enslaved, were not United States citizens; and (2) Congress was powerless to prevent slavery's spread into United States Territories.

far west as New Mexico – which killed more than 4,400 Americans *every single day*, felled by small arms fire and crude artillery, edged weapons in close combat, and unchecked disease.

As a legal matter, Tammy Lanier’s case is a simple one. Harvard created the Renty-Delia Slave Images for a single purpose: To illustrate, using Agassiz’s observational “scientific methods,” the inherent inferiority of the Black Races. When the subject images were captured, Renty was a slave, whose master-owner required him to pose for a daguerreotype. As chattel under South Carolina law, human property without civil rights, Renty was powerless to refuse the appropriation of his image or its use in other settings. He also was powerless to contract under South Carolina law and so couldn’t have given effective consent in any event.

The incontrovertible fact of his (Renty’s) legal status when the images were created leads to one of two possible conclusions: (1) Renty “owned” those appropriated images at the outset and his interest passed to his descendants; or (2) Harvard owned the images until Lincoln’s Emancipation Proclamation on January 1, 1863 or (at latest) ratification of the Thirteenth Amendment on December 6, 1865 at which point title to those images vested in Renty. A post-Reconstruction decision of the South Carolina Supreme Court appears to support the former analysis:

This court has often held that *the acts of 1865, 1866, and 1872, sometimes called the "Enabling Acts," in reference to the new status given to former slaves by emancipation, were intended to be, and are, retrospective in their operation.* The emancipation of slaves entirely changed their status. It was a new condition of things, when a whole lass of persons, formerly slaves, without civil rights, had conferred upon them the rights of citizens to acquire property, and to contract and be contracted with as to all matters[.]

Callahan v. Callahan, 36 S.C. 454, 15 S.E. 727, 730 (1892) (emphasis supplied).

Adoption of the Thirteenth Amendment would seem to prohibit retroactive enforcement of any property right ostensibly vested in Harvard (whether directly or through its proxies) under South Carolina law at the expense of a, quite literally, captive audience. Under Callahan, Renty is endowed retroactively with a right to protest appropriation of his image – a right antebellum State law restrained him from asserting. Either way, Harvard must surrender what amounts to what amounts to a “family photo,” albeit one taken without legally cognizable consent of the subject.

Unless a Massachusetts court is prepared to enforce antebellum South Carolina law, it must conclude that: (1) the resulting image was “stolen” or otherwise appropriated without permission of the subject; (2) neither the photographer nor anyone else involved in procuring his image acquired good title or other authority to use it; (3) only Renty acquired any rights to the image, which passed to his descendants; and (4) Harvard took no better title to the image than would a thief.