

## **Recommendation to the President and Fellows of Harvard College on the Shield Approved for the Law School**

The heraldic blazon or shield authorized for use by the Law School by the President and Fellows of Harvard College in 1937 derived from the family crest of Isaac Royall, Jr., whose bequest to the College in 1781 was used to create the first endowed professorship of law in the College in 1815. Royall derived his wealth from the labor of enslaved persons on a plantation he owned on the island of Antigua and on farms he owned in Massachusetts. The Law School has been aware of this association since about 2000, when Professor Daniel R. Coquillette began disseminating the results of his research discussed below. Students of the Law School, affiliating under the name Royall Must Fall, protested use of the shield last fall. After a racially-charged incident in Wasserstein Hall on November 18, 2015, Dean Martha L. Minow, as part of her response, created this Committee to study the shield and to recommend to the President and Fellows whether or not to retain it for use by the Law School.

### *1. The Committee's Charge*

Dean Minow's charge to the Committee was that it recommend to the President and Fellows whether or not to retain the shield. The Committee has interpreted this as whether a shield that draws on one part of our past should remain the official symbol of Harvard Law School now and in the future. We have not taken our charge to include whether to recommend a new shield, let alone designs for one. Nor have we understood it to be whether the Law School should acknowledge or engage with the legacy of Isaac Royall in specific ways. Those all are worthy questions, but they are questions for the Law School to consider, not the President and Fellows.

### *2. The Committee Process*

On November 30, Dean Minow announced that she had appointed as the faculty members of the Committee Professors Tomiko Brown-Nagin, Annette Gordon-Reed '84, Janet Halley, Bruce H. Mann (Chair), and Samuel Moyn '01. She also appointed two other alumni to the Committee, James E. Bowers '70 and Robert J. Katz '72. She asked the student government of the Law School to appoint the student members of the Committee, which it did on January 8, 2016. They are Rena Karefa-Johnson '16, Annie Rittgers '17, and Mawuse Oliver Barker-Vormawor LL.M. '16. She also asked the staff joint council of the Law School to appoint the staff members of the Committee, which it did on January 22. They are S. Darrick Northington and Yih-hsien Shen '95.

By e-mail circulation on November 30, Professor Mann, as Chair of the Committee, informed the faculty, staff, and students of the Law School that the Committee would schedule community meetings when classes resumed for the spring semester for students, faculty, and staff to make their views known. He also announced that the Committee had created a dedicated e-mail account and invited members of the Law School community to submit their opinions and concerns while awaiting appointment of the remainder of the Committee. By the time the Committee held its first meeting on January 25, approximately 150 students, staff, alumni, and faculty had taken the Committee up on this invitation.

As announced, the Committee convened two open discussion meetings—one on February 4 and the second on February 12—which together were attended by approximately 180 people—mostly students, but also a fair number of staff and a handful of faculty. The Committee solicited additional comment from the faculty through the faculty listserv and from the alumni through a separate e-mail invitation distributed through the Alumni Office. Individual members of the Committee also engaged their fellow members of the Law School community in informal one-on-one conversations and small-group discussions.

The upshot of these efforts is that the Committee heard directly from well over 1,000 members of the larger Law School community—students, staff, faculty, and alumni. The Committee met on February 26 to discuss what it had learned.

### 3. *The Royall Family*

The Royall family wealth was amassed through the labor of enslaved persons. Isaac Royall, Sr. (1677-1739), owned a sugar plantation on the island of Antigua and farms in Massachusetts, all of which were worked by enslaved persons he bought, sold, owned, and transferred from one location to another.<sup>1</sup> Isaac Royall, Jr. (1719-1781), inherited these estates upon his father's death in 1739 and owned them until his death in 1781. There have been present claims of Isaac Royall, Sr.'s particular brutality and historical reports of Isaac Royall, Jr.'s supposed kindness as a master, but they are beside the point. Every modern historian who has studied the institution of slavery agrees that slavery in the Americas was inherently brutal, violent, oppressive, and dehumanizing. Its evil and immorality are neither magnified nor diminished by individual instances of exceptional brutality or kindness. Thus, if the Law School is to assess its relationship to Isaac Royall, Jr., it is sufficient that his wealth came from slave labor. We need not charge him with the alleged brutality of his father or credit him with his own alleged kindness.

That said, it is important to correct certain misconceptions that have inflamed discussion so that we may address the matter clearly. Some people at the Law School have read a recent, brief account of the Royalls and the punishments meted out to suppress the planned slave revolt

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<sup>1</sup> See Alexandra A. Chan, *Slavery in the Age of Reason: Archaeology at a New England Farm* (University of Tennessee Press, 2007), 47-53.

on Antigua in 1736 as implying that one or both Royalls were primarily responsible for the execution of 88 enslaved persons by gibbeting, burning at the stake, or being broken on the wheel.<sup>2</sup> This is mistaken. Putting aside the fact that “our” Isaac Royall–Junior–was 17 at the time and that it was his father who owned the slaves, there is no evidence of the role–whether prominent or otherwise–that either Isaac Royall played in suppressing the revolt, nor is there any evidence that would let us determine whether either one was any more or less brutal than his fellow slave-owners on Antigua, although historians have long recognized that conditions of slavery in the Caribbean were markedly harsher than they were in the mainland colonies.

The most comprehensive and authoritative study of the 1736 revolt is by David Barry Gaspar, a professor history at Duke University.<sup>3</sup> Gaspar’s only mention of Isaac Royall (this would be Senior) is in his tabulation of slaves executed, the date and manner of execution, and their owners.<sup>4</sup> This table is copied from the report submitted on May 26, 1737, to the Board of Trade in London by William Mathew, lieutenant governor and captain-general of the Leeward Islands, which is in the Colonial Office papers in the National Archives (formerly the Public Record Office) in London at Kew, captioned “A List of the Names of Negroes that were Executed for the late Conspiracy, Their Trades, To whom they belonged, the day and Manner of their Respective Execution.” The executions spanned a period of four-and-a-half months, from October 20, 1736 to March 8, 1737. Isaac Royall, Sr., owned one of the 88 enslaved persons executed–Hector, who is listed as “driver,” which would have made him the enslaved equivalent of an overseer of the plantation. The other 87 persons executed were owned by 59 other individuals and estates. To give a sense of scale, the white population of Antigua in 1734 (the closest year for which Board of Trade figures exist) was 3,772, and the enslaved population was 24,408.<sup>5</sup> Thus, 86.6% of the total population of the island was enslaved–a ratio of 6.5:1.

Isaac Royall, Sr., moved his family and a number of his slaves back to Massachusetts in 1737, shortly after the revolt on Antigua was suppressed. He died there in 1739. His son, Isaac Royall, Jr., inherited the sugar plantation on Antigua as well as the farms in Massachusetts and owned both until he died in 1781. Thus, Isaac Royall, Jr., lived and died an owner of slaves, from whose labor he accumulated significant wealth, a portion of which he gave to Harvard. That is the relevant connection.

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<sup>2</sup> Daniel R. Coquillette and Bruce A. Kimball, *On the Battlefield of Merit: Harvard Law School, the First Century* (Harvard University Press, 2015), 81-82.

<sup>3</sup> *Bondmen and Rebels: A Study of Master-Slave Relations in Antigua* (Johns Hopkins University Press, 1985; paperback printing by Duke University Press, 1993).

<sup>4</sup> *Ibid.*, 30-35 (Table 2.1 [“Slaves Executed, 1736-1737”]).

<sup>5</sup> *Ibid.*, 83 (Table 4.8 [“Population of Antigua, 1672-1774”]).

#### 4. *Isaac Royall, Jr. 's Bequest*

Isaac Royall, Jr., remained behind British lines in Boston after war broke out in April 1775. From there he fled to Halifax with other loyalist refugees and then on to London, where he remained in exile until he died in 1781. By his will of May 26, 1778, and a codicil of November 1779, both written and executed in England, he bequeathed land in Massachusetts totaling approximately 900-1000 acres to Harvard College, “to be appropriated towards the endowing a Professor of Laws . . . or a Professor of Physick and Anatomy, whichever the said overseers and Corporation [of the college] shall judge to be best.”<sup>6</sup> As Coquillette and Kimball note, none of the land was sold until 1796, and the remainder not until 1805 and 1809. The total sum realized from the sales was \$2,938. Investment by Harvard increased this amount to \$7,593 by 1815, which under the pay-out practices used by the college treasurer at the time would have yielded about \$340 annually for the professorship. When the Harvard Corporation voted to establish the Royall Professorship of Law in 1815, it agreed to commit \$400 of the income from Royall’s legacy as compensation for the services of the Royall Professor. It merits noting that full professors in the college at this time were paid about \$1700 annually.<sup>7</sup>

The Corporation appointed Isaac Parker as the first Royall Professor on September 4, 1815, at an annual salary of \$400 “to give lectures on jurisprudence at the University.”<sup>8</sup> The Royall Professorship was not a full-time position. Parker’s only instruction in his first year was a series of seventeen or eighteen broad survey lectures he delivered to members of the senior class in the college in June and July 1816. Moreover, Parker was chief justice of the Supreme Judicial Court of Massachusetts at the time of his appointment and remained chief justice until he died in 1830. However, during his first year as Royall Professor, Parker did formulate a plan for a tuition-dependent residential law department within the university, which he persuaded the Overseers and Corporation to approve on June 12, 1817. Parker knew that such an undertaking could not succeed with a part-time Royall Professor alone, so he persuaded the Corporation to appoint Asahel Stearns as a full-time University Professor of Law, to be paid by the university from tuition, not from an endowment (as Parker was). It was Stearns who did most of the instruction in the new Law Department.<sup>9</sup>

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<sup>6</sup> Quoted in Coquillette and Kimball, *On the Battlefield of Merit*, 86. A copy of the will is in the Harvard Law School Library Special Collections.

<sup>7</sup> *Ibid.*, 87.

<sup>8</sup> Harvard University Corporation, Meeting Minutes (Sept. 4, 1815), Corporation Records, Harvard University Archives. For convenience, we cite to the minutes as quoted in Coquillette and Kimball, *On the Battlefield of Merit*, 90. The Corporation adopted the Statutes of the Royall Professorship five weeks later, on October 11. They are printed in *ibid.*, 618-20 (App. C).

<sup>9</sup> This account relies on the exhaustive research of Coquillette and Kimball in *ibid.*, 91-109.

Many members of the Law School community from whom we heard asserted that Isaac Royall, Jr.'s bequest established the Law School. As should be clear from Coquillette's and Kimball's research and discussion, the sequence of events was more complex than that. Isaac Royall's bequest did not by itself fund or create what became Harvard Law School. Nor did it provide the occasion for creating what became Harvard Law School. It would be more accurate to say that, when the College decided to offer lectures in law, Isaac Royall's bequest, which had lain dormant for many years in part because of its insufficiency, was available to help support the lectures, and that it was Isaac Parker, the Royall Professor, who created a Law Department at Harvard with additional resources drawn from tuition, monies allocated by the Corporation to purchase books, gifts of books, and outright donations.<sup>10</sup> That said, the endowment that supported the part-time Royall Professor who then created the Law Department derived from the sale of land that had been purchased by a slave-owner from wealth accumulated from slave labor.

### 5. *The Law School Shield*

The shield currently used by the Law School was designed in 1936 by Pierre de Chaignon la Rose (Harvard College, 1895) as part of Harvard University's tercentenary celebrations. La Rose was an expert in heraldry who designed the arms for the university, the College, the eleven graduate schools, and seven houses that were used on the tercentenary banners for the closing ceremonies of the celebration.<sup>11</sup> The following year, 1937, la Rose asked the university's Committee on Seals, Arms, and Diplomas to move that the Harvard Corporation approve the formal heraldic descriptions of the arms he had designed. The Corporation did so on December 6, 1937, in what Mason Hammond describes as "curiously guarded terms"—"the Corporation, while having no objection to the use for decorative purposes on the occasions of ceremony or festivity of the blazons proposed for the several departments or faculties, do not approve their use for other purposes."<sup>12</sup> Whether this makes the Law School shield "official" or merely "authorized" is open to interpretation. Two schools—the Graduate School of Arts and Sciences and the Dental School—have treated the "authorized" arms as a matter of choice and do not use the ones designed for them by la Rose. Instead, they use the shield la Rose designed for the university—the "*Veritas*" shield still used, with which we are all familiar.

La Rose did what heralds do—he adapted design elements and symbols associated with the origins or history of a family or institution. For the Law School, he based his design on a bookplate used by Isaac Royall, Sr., on Antigua in the 1730s. The crest on the bookplate depicts

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<sup>10</sup> See *ibid.*, 103-105.

<sup>11</sup> The most authoritative source for the design and adoption of the Law School shield is Mason Hammond, "A Harvard Armory: Part I," *Harvard Library Bulletin*, 29 (1981), 261-97. Hammond was Pope Professor of the Latin Language and Literature *emeritus* at Harvard University. He served for many years on the university's Committee on Seals, Arms, and Diplomas.

<sup>12</sup> *Ibid.*, 265.

three sheaves of wheat.<sup>13</sup> It is not known who designed the crest on the bookplate or whether Isaac Royall, Sr., was entitled to use the crest as his family's coat of arms. Sheaves of wheat have long been a common element of heraldic devices—signifying such agricultural virtues as abundance, fertility, and a good harvest—and are by no means unique to the Royalls.<sup>14</sup> There is no evidence that la Rose or the Corporation were aware of or even thought to ask how the Royall family amassed its fortune. They would hardly have been alone in this. Few people in 1936 asked such questions, particularly about bequests made 150 years earlier. Even in 1981, Hammond in his brief description of the Royall crest makes no mention of slaves or slavery and says of Isaac Royall, Sr., on Antigua simply that “[t]here he prospered.”<sup>15</sup> As historians well know, this reflects both the historical invisibility of African-Americans and the long-standing inability of modern Americans to acknowledge the centrality of slavery and its legacy in American history.

La Rose's design did not gain wide usage at the Law School until many years later. Karen S. Beck, manager of Historical and Special Collections of the Harvard Law School Library, reported to the Committee that its use has been inconsistent over the years. For example, the *Harvard Law Record* first used the shield on its masthead on April 1, 1950. Law School class reports began using the shield in the early 1960s and have used it since. The alumni directory first used it in 1973. The Law School *Bulletin* first offered shield-branded shot glasses, neckties, and the like for sale in October 1969. Until the mid-1990s, when they began using the crest, Law School yearbooks used the university shield or no shield at all. The student directory has never used it. The graduate student handbook began using it in the mid-1990s. Ms. Beck believes that the la Rose shield came into wider use in the mid-1990s as part of an apparent effort to give Law School publications a more consistent “brand,” part of which was a more liberal use of crimson-colored covers, as well as use of the shield.<sup>16</sup> From this the Committee concludes that consistent use of the la Rose shield by the Law School as its symbol is of relatively recent vintage, although its use before it became ubiquitous was prominent enough for it to represent the Law School to members of the larger Law School community.<sup>17</sup>

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<sup>13</sup> See the illustration at Coquillette and Kimball, *On the Battlefield of Merit*, 76.

<sup>14</sup> See, for example, W. Sloane Sloane-Evans, *A Grammar of British Heraldry, consisting of Blazon and Marshalling* (2d ed., London, 1854), 140.

<sup>15</sup> Hammond, “A Harvard Armory,” 284.

<sup>16</sup> E-mail communications from Karen S. Beck to Bruce H. Mann.

<sup>17</sup> As an aside, it is worth noting that the Law School shield does not appear on the diplomas graduates receive at Commencement. The university shield does. This is because degrees are granted by the university, not by its component schools.

## 6. *Survey of the Arguments Offered by Members of the Law School Community*

This section attempts to summarize the variety of arguments and opinions offered by the one thousand or so members of the larger Law School community who communicated them to the Committee. The Committee has made no effort to tabulate them, nor did it count comments as one would votes. Many alumni reported that they had not known of the association of the shield with slavery. This is not surprising, since it has been only recently, because of Professor Coquillette's research, that Dean Minow began telling incoming students of the association as a reminder that lawyers must do more than merely know and follow the law and must strive to ensure that the law itself is just. What made the responses so useful to the Committee was their analysis of what the Law School should do now, with our new awareness of the shield's connection to slavery. For many alumni, their new knowledge of the association taints the shield irreversibly. Also for many, their new knowledge does not change the fact that for them the shield represents their Harvard Law School—its role in their lives and the good they associate with it. For both, the question is one of history, or rather several questions of history.

The first question of history is the history of a symbol and its meaning. The shield did not become seen as a symbol of slavery until very recently. Its previous history, from 1936 until the near present, was simply as a symbol of Harvard Law School—no more, no less. During that time, the associations it had as a symbol were those given it by people to whom it represented “their” Harvard Law School—associations that could be fond and good or painful and bad, none of which rested on knowledge of Isaac Royall or slavery. Many older African-American alumni reported their attachment to the shield as a proud, even defiant, symbol of their accomplishment at a time when the larger world often refused to recognize their merit. It is hardly surprising that symbols can mean different things to different people at different times. The difficulty arises in the present when the symbol means different things to different members of the same community. Can the symbol retain its former meaning in the face of knowledge that has added a new, unsavory meaning to it? Can symbols accommodate multiple meanings?

A second question of history is how we engage the past—in this instance, our past as an institution. Historians engage the past to help us understand who we once were, how we became who we are now, and, for some, how we can strive toward better versions of our collective selves in the future. For historians, it is both a professional and a moral imperative to confront the past clearly and unflinchingly and to teach that past to the present and for the future. What role should the shield play in that engagement? Should it remain as a constantly-visible reminder of past injustices within our own institutional DNA, a spur to work to bend the arc of history toward justice? Would it serve as such a spur if it remains, or would its lessons fade without continual effort to teach them? Would changing the shield be an act of erasure? Would doing so allow us to forget history rather than engage it?

A third question of history is what to do when symbolic representations of history offend present members of a community. We have heard that the shield offends many persons of color—current students in particular—and reminds them of past oppressions and present

discriminations. Some say that it leads them to question whether they are accepted as equal members of the Law School community, particularly in the face of what they experience as other slights. People understand that the shield is not the Confederate battle flag—it was not adopted as the rallying symbol for an unjust cause and has not been used throughout its history in the service of injustice. Nonetheless, many—although by no means all—people of all races and ethnicities see it as a symbol of exclusion—a reminder of an exclusionary past that should have no place in an inclusive present.

A fourth question of history is what the Law School is recognizing now by having an adaptation of the Royall family crest as the official symbol of the institution. Are we honoring Isaac Royall himself for his personal qualities and accomplishments? Or are we honoring him for donating land to Harvard? This is where the slippery-slope arguments offered by many respondents—that if we abandon the shield we should also jettison all things Washington and Jefferson—fail. All three men had moral feet of clay as slave-owners, but only George Washington and Thomas Jefferson have independent claims on history, for which they are rightly honored while we also acknowledge their slave-holding. In addressing these questions, it is important to make clear that we are not judging Isaac Royall, a man of the eighteenth century, by standards of the twenty-first century. Instead, we are asking whether an institution in the twenty-first century should be represented by a man of the eighteenth century whose only legacy was his money.

Not surprisingly in a sample of one thousand comments, there is significant disagreement on what should be done with the shield. It is important to note that the differences of opinion do not line up along standard divisions of age, race, or political identification. Older alumni and younger alumni alike support and oppose the shield. Minority alumni of all backgrounds—African-American, Latino, Asian-American, and others—also support and oppose the shield. Current students—minority and otherwise—support and oppose the shield. Political liberals and conservatives similarly both support and oppose the shield. The comments the Committee received demonstrate that people of good faith can and do hold considered, if different, views of the matter. If there is a common thread, it is in the many professions of respect for and attachment to the Law School. And that is where the Committee began its discussion at its last meeting.

### *7. Committee Discussion*

The Committee recognizes that on an issue that elicits such strong feelings, we can and should acknowledge those feelings, but we cannot and should not presume to judge which feelings are valid and which are not. Instead, we must do what so many members of the Law School community who commented did and what is incumbent upon us as members of an academic community to do, which is to decide in a reasoned and principled manner.

Like the larger Law School community, the Committee was not of one mind. We endeavored to arrive at a consensus. And we did reach consensus, if not quite unanimity.<sup>18</sup>

The Committee was unanimous in recognizing that modern institutions must acknowledge their past associations with slavery, not to assign guilt, but to understand the pervasiveness of the legacy of slavery and its continuing impact on the world in which we live. For the Law School, this means reminding ourselves and others of the role of wealth derived from slave labor in its founding and using that knowledge as a spur to promote racial justice within the broader mission of striving to ensure that the law itself is just through the students we educate. Where the Committee was not unanimous was on the question of whether retaining the current shield as the official symbol of the Law School helps or hinders attaining that goal. Professor Gordon-Reed argues powerfully that the inescapable presence of an official shield that displays on its face its association with a slave-owning benefactor is essential to ensuring that members of the Law School community cannot ignore its lessons. Set against this is the belief that the now-visible associations of the shield divide the Law School community and hinder engaging that portion of the institution's past; that many who become aware of its origins are more likely to see the shield as a distasteful symbol of the past rather than as an opportunity to learn from that past. At bottom, this latter view rests on the conviction that there are better ways to engage the past and its legacy in the present than by retaining a symbol that so many members of the community reject. It is this conviction that represents the consensus of the Committee. In reaching that consensus, the Committee understands that removing the current shield courts the risk of self-congratulation, which we do not intend. The Committee also understands that neither retaining nor removing the shield, without more, will assure that the Law School and the Law School community continue to engage with this part of the institution's past.

#### *8. Recommendation*

The Committee respectfully recommends that the President and Fellows of Harvard College declare that the shield designed by Pierre de Chaignon la Rose in 1936 based on the Royall family crest is no longer the official or authorized shield of the Law School. The Committee makes this recommendation to the President and Fellows rather than simply asking the Law School to cease use of the shield because we believe that if the Law School is to have an official symbol, it must more closely represent the values of the Law School, which the current shield does not.

In making this recommendation, the Committee understands and regrets the disappointment it will cause fellow members of the Law School community for whom the shield invokes not Isaac Royall and his slaves but rather the institution they are proud to be part of. The Committee also understands and regrets the disappointment it will cause other fellow members

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<sup>18</sup> Professor Gordon-Reed, who does not join the Committee's recommendation, has written her own submission, which is forwarded to the President and Fellows alongside the recommendation of the Committee. Mr. Barker-Vormawor concurs in the Committee's recommendation.

of the Law School community who believe the shield should remain as an unblinking reminder of past injustice, urging us by its presence to do better. Moreover, the Committee recognizes, indeed celebrates, that Harvard Law School is a large and diverse place populated by people who are both inclined and whom we train to express their views vigorously. Perhaps no one symbol can adequately represent all of them, and certainly not all of them would choose to be represented by the same symbol. Nonetheless, it is undeniable that the Law School of the present is very different from the Law School of 1937 for which the family crest of a slave-owner could be chosen as its official symbol without anyone seeing the association with slavery. We cannot un-see what we now know, nor should we. The Law School would not today honor Isaac Royall and his bequest by taking his crest as its official symbol.

The Committee recognizes that names from the past associated with now-rejected beliefs and practices litter the present, often in places of apparent honor. We take no position on what, if anything, should be done with them, other than to note that titles and buildings are individual pieces of an institution and are not presented as the official symbol of the institution itself. Our recommendation is limited to the symbol that officially represents Harvard Law School to the Law School community and to the larger world. It is that symbol that we request the President and Fellows to release us from.

Respectfully submitted,

Bruce H. Mann, *Chair*  
Carl F. Schipper, Jr. Professor of Law

James E. Bowers '70

Tomiko Brown-Nagin  
Daniel P.S. Paul Professor of Constitutional Law & Professor of History

Janet Halley  
Royall Professor of Law

Rena Karefa-Johnson '16

Robert J. Katz '72

Samuel Moyn '01  
Professor of Law and History

S. Darrick Northington

Yih-hsien Shen '95

Mawuse Oliver Barker-Vormawor, LL.M. '16 concurs in the recommendation

*March 3, 2016*