

The Role of Law in Shaping the Lives of Black People in Eighteenth-Century Canada

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The recent “Black Lives Matter” movement across North America and its sentiments can be traced back to eighteenth-century Canada. This paper argues that despite being free (i.e., those who were not enslaved), Black people were never regarded and treated on the same level as their white counterparts. Through various historical sources, we can observe the conspicuously exhibited racism towards Black people during the eighteenth and nineteenth centuries, most notably seen in judicial and political matters. First, the paper will examine a judgement from 1779, titled, “Watson alias Phillis v. Proud,” and dissect its contents in relation to law’s corruption versus intention. Second, an “address of the House of Assembly to Lieutenant Governor Sherbrooke opposing [B]lack refugee immigration” will be analyzed concerning long-held beliefs of Black inferiority perpetuated by slavery and the slave trade. Third, a petition proposed by Black residents of Hammond Plains will further the discussion of indifference towards Black Nova Scotians. Lastly, the paper will delve into a petition by John Taylor and various other white slaveholders regarding their rights as British subjects to engage in slave ownership. Throughout the paper, interpretations of Charmaine Nelson and Harvey Amani Whitfield will be inserted to provide a secondary perspective on the topic of slavery and the law. It is important to note that centuries of being denied equal opportunities (i.e., there is a stark difference between how Black and white people are treated by the law) erode the future of marginalized groups, leading to adverse effects that are present in the Black communities of North America even today.

The judgement “Watson alias Phillis v. Proud” exemplified the law siding with white settlers of Nova Scotia.¹ The primary governing body in Nova Scotia during the eighteenth

¹ “Watson alias Phillis v. Proud (judgement), 1779,” *African Nova Scotians in the Age of Slavery and Abolition*, virtual exhibit, Archives of Nova Scotia (<https://archives.novascotia.ca/africanns/archives/?ID=14>, accessed 13 October 2021).

century consisted of white officials and thus, the laws enacted were imposed to benefit the white population. In the document, there is a vast distinction between corruption and intention of law. The judge did not investigate deeper into the case and simply believed Watson's white slaveholder over her and her witness's testimony;² this instance allows us to extract three things. The first point highlights that the trust of the law in white people severely outweighed that of people of colours'. This was not counterintuitive though: the law was designed this way to support and back up white settlers, continuously keeping them in power. In the case of Watson, the act of returning her to her slaveholder silenced her voice and agency, shifting the fate of her life at the hands of a white jury. This begs the question, why are Black settlers regarded and treated this way? The answer lies within the long-held notion of Black people as commodities, stemming from the slave trade. In the judgement, it seemed as though Watson was nonchalantly handed over to Proud, like an item. There was no humanity in the transaction. Rather, the law was wired so Watson could end up as the property of a white slaveholder, merely on the basis of her skin. Gradually, this blurred the lines between a free versus enslaved Black person, as law figures automatically correlated "Blackness" to the status of a slave. Consequently, Watson also underwent an intersectional struggle. As a woman of colour, she was completely at the mercy of her white, abusive male slaveholder. According to Nelson, there entailed extra hardships for Black enslaved women, as many incurred sexual assaults on top of mental and physical torture.³ The instance of Watson and Proud exposed one of the many cases where Black individuals, many of them immigrating from the States after the Revolutionary War, were belittled by law.

² *ibid.*

³ Charmaine Nelson, "What Black People in the British Empire Endured," interviewed by Jeff Douglas, *Mainstreet Nova Scotia*, CBC, 20 July 2021 (<https://www.cbc.ca/listen/live-radio/1-37-mainstreet-ns/clip/15856140-charmaine-nelson-explains-black-people-british-empire-endured>, accessed 25 November 2021)

There were great hostilities from white Nova Scotians towards Black people who were coming into the British colony. On April 1, 1815, the Nova Scotian House of Assembly motioned against the immigration of Black refugees.⁴ The members stated, “[black people mark a] class of people, unfitted by nature to this climate...” as one of the main reasons for their opposition.⁵ Already, the sentiment of supposed Black inferiority next to white supremacy rendered these members to believe they had the right to dictate who may enter “their” nation based on one’s skin colour. This belief can be traced back to the Trans-Atlantic African slave trade and how the first interactions between white settlers in the Americas and Black people were through the purchase and extortion of labour. These values and notions towards Black individuals did not disappear merely after the British Crown granted loyalist status to enslaved people of America. More importantly, because enslaved Black people existed alongside free Black people, it extended the blurring between what it meant to be free and how one should be treated if they were. Similarly, Whitfield mentioned how print culture also contributed to the merging of free versus enslaved because it stripped human identity from Black people as a whole through slave advertisements (i.e., making humans look like goods).⁶ The fact is, this undermining of freedom within the free Black community encouraged arbitrary re-enslavement and created more slaves for white settlers to buy and sell.⁷ If white people believed they had the right and ownership of their slaves, it would continue to fuel their purported sovereignty over

⁴ “Address of the House of Assembly to Lieutenant Governor Sherbrooke opposing black refugee immigration, 1 April 1815,” *African Nova Scotians in the Age of Slavery and Abolition*, virtual exhibit, Archives of Nova Scotia (<https://archives.novascotia.ca/africanns/archives/?ID=76>, accessed 14 October 2021).

⁵ *ibid.*

⁶ Harvey Amani Whitfield, “White Archives, Black Fragments: Problems and Possibilities in Telling the Lives of Enslaved Black People in the Maritimes,” *Canadian Historical Review* 101, 3 (September 2020): 323-45

⁷ *ibid.*

Black people. This leads us back to the petition: white Assembly members thought they had authority over the population all because of their slaveholder status. The racialized gatekeeping perpetrated by white Nova Scotians did not spring up out of nowhere, as seen in its roots from the slave trade, and within the colony, white settlers prevented the expression of Black identity in the existing population too.

The Black community of Nova Scotia endured much neglect from state affairs, with reference to an example in 1826 when a group of residents from Hammond Plains requested aid to build a church.⁸ The bishop refused to grant assistance, insinuating that “the church would not follow the ‘established religion’” with no evidence to support this belief.⁹ This piece offered insight into the legal system of Nova Scotia during that period: who were allowed freedom of expression? If it was not stated clearly, the people at the top (i.e., white governors) could abuse this law and twist it to work in their favour. The decision by the bishop shed light on the state’s apathy towards Black people, despite the importance of religion in their lives. This reintroduces the stripping of human identity, starting with Black people’s freedoms. In Whitfield’s academic journal, he included a statement by a bishop named David George: “‘White people in Nova Scotia [had] treated many of us as bad as though we [free blacks] had been slaves.’”¹⁰ The negligence was propelled through the long-standing, arbitrary association between Black people and slaves. As slaves are treated like property, they merely do not require the white population to attend to their desires because, after all, they are commodities, and it is up to white settlers to

⁸ “Petition of black residents of Hammonds Plains for assistance to build a church, 18 August 1826,” *African Nova Scotians in the Age of Slavery and Abolition*, virtual exhibit, Archives of Nova Scotia (<https://archives.novascotia.ca/africanns/archives/?ID=94>, accessed 13 October 2021).

⁹ *ibid.*

¹⁰ Harvey Amani Whitfield, “White Archives, Black Fragments: Problems and Possibilities in Telling the Lives of Enslaved Black People in the Maritimes.”

decide what to do with them. This severs Black people's ties to any essence of humanity and so, in that sense, should they really be bestowed the liberties white people have (e.g., owning a church)? The overall treatment of Black people emphasized the hierarchy of Black and white settlers, and this indifference towards the Black population spilt over to how the white people perceived the wellbeing of Black individuals.

One of the most extreme divisions between the status of Black and white settlers based on the sources discussed lies within the document of John Taylor and other slaveholders (1807).¹¹ The piece discussed how white slaveholders have the right over Black people's autonomy but ironically states, "...the petitioners claim not to advocate the system of slavery..."¹² The paradox implied that because they were British subjects, they thought they could do whatever they wished. However, it went beyond subjecthood. Black loyalists, who were free, were subjects of the Crown as well, but they were still grouped with enslaved Black people. It seemed as though white settlers were just finding an excuse to be racist without saying they were. White settlers wanted to benefit from the exploitation and ownership of Black people. This exposes that these petitioners never truly cared about the welfare of Black people; they only cared about the money they made from having Black people around. Likewise, Nelson spoke about how the British Crown compensated billions of dollars to white slaveholders who lost their rights of ownership through the Abolition Act (1833).¹³ The fact is, as long as they were given the amount they could have exploited from their slaves (if they were still able to keep them), they

¹¹ "Petition of John Taylor and other slaveholders, 3 December 1807." *African Nova Scotians in the Age of Slavery and Abolition*, virtual exhibit, Archives of Nova Scotia (<https://archives.novascotia.ca/africans/archives/?ID=64>, accessed 14 October 2021).

¹² *ibid.*

¹³ Charmaine Nelson, "Nova Scotians Profited from Slavery," interviewed by Jeff Douglas, *Mainstreet Nova Scotia*, CBC, 13 July 2021 (<https://www.cbc.ca/listen/live-radio/1-37-mainstreet-ns/clip/15854850-nova-scotians-profited-slavery-reckoned-rectified-history-says>, accessed 25 November 2021)

would be satisfied, further supporting the earlier statement of viewing enslaved Black people as personal assets rather than actual humans that deserved rights of their own. Black people received nothing from the Crown,¹⁴ and so they lacked the head start their white counterparts had, stretching the social gap between white and Black settlers. The commodification of Black people ate into any judicial morality shown towards them and therefore, trapped them in the form of oppression.

In politics and law, Black people were immensely suppressed to the margins of society because of their alleged inferiority to the white race. This can be seen in instances concerning court judgements, immigration, culture and community, and rights and freedoms. The sources covered in this paper were all from the perspective of white settlers, so it is crucial to bear in mind the silences of those living through the horrors and the potential inaccuracies. As seen in today's world, justice and law continue to oppress Black people (e.g., police brutality, mass incarceration). Nelson alludes to the Jim Crow Laws in the U.S. and how despite abolition, there were still new laws that limited Black people from "accru[ing] wealth in the same way white settlers would."¹⁵ The constant renewal of oppressive law maintained white people's power, allowing them to govern the people of colour who were forced to the bottom of the hierarchy. This brings us back to the discourse of "Black Lives Matter"; Black voices have been neglected for so long, and it is time we amplify them and stand against the systemic racism Black people face.

¹⁴ *ibid.*

¹⁵ Charmaine Nelson, "Nova Scotians Profited from Slavery."