

**The Legacy of Slavery: The Law's Role in Entrenching Anti-Black Racism in Canada**

James Goodyear

One must understand systemic anti-Black racism within the context of slavery - the two are co-dependent concepts that have reinforced one another throughout Canadian history. One way to understand this interconnected development is to examine Black people's historically unequal treatment before the law. This unequal treatment helps demonstrate that racism, rather than a product of arbitrary discrimination, is instead a byproduct of slavery itself. The near-exclusive enslavement of Black people made it easy for white settlers to attribute coloured skin as a sign of eligible property and inferiority. Despite the emancipation of enslaved people and the gradual improvement of Black people's legal treatment, the law system helped entrench slavery's legacy of racism and discrimination through court decisions and legislation, fostering a sense of superiority among Canada's white population. This essay discusses how court decisions contributed to the popular notion that Black people are inferior. It then explores the presuppositions of white supremacy that developed due to these decisions. Finally, it discusses how the legacy of anti-Black racism in law continues to haunt Canada's Black population.

Court decisions dehumanized Black people by discounting their worth and their ability to defend themselves. The story of Lydia Jackson, as recounted by white abolitionist John Clarkson, details the nature of this legal discrimination. A white man successfully manipulated a Black woman - Lydia Jackson - into indentured servitude, then slavery, before selling her to a new owner.<sup>1</sup> As Clarkson describes, "[He] turned out to be a very bad master, frequently beating her [. . .] though she was then in the last month of pregnancy, in the most inhuman manner."<sup>2</sup> When she miraculously managed to notify an attorney who brought her case to court, it "was soon silenced by the overbearing manners & influence" of her owner, who then sold her again to a planter in

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<sup>1</sup> "John Clarkson's Account of the Story of Lydia Jackson, 30 November 1791," *African Nova Scotians in the Age of Slavery and Abolition*, virtual exhibit, Archives of Nova Scotia (<https://archives.novascotia.ca/africanns/archives/?ID=45&Page=200402064&Transcript=1>, accessed 24 September 2021).

<sup>2</sup> *Ibid.*

the West Indies.<sup>3</sup> The court's failure to protect Jackson from her illegal enslavement and abuse reveals the power white people held over the Black population, able to exercise discriminatory exploitation free from legal consequences. When she later escaped and met Clarkson, who consulted a lawyer on her behalf, the lawyer could only promise "that her wages could be recovered for the time she lived under" her abuser - thus, despite his illegal actions, her abuser was allowed to walk free.<sup>4</sup> It is important to note Clarkson wrote this account, not Lydia - it is his interpretation of Lydia's story, and as with any story's retelling, there may be discrepancies compared to what actually occurred. Moreover, Clarkson was a white man and thus never personally experienced the discrimination Black people faced. As Professor Harvey Whitfield notes, "Everything we know about Lydia Jackson comes from what she told John Clarkson about her life."<sup>5</sup> This fact highlights how segregated Black people were from society, barred from the resources and education necessary to produce their own written records. Documents written by white people can nevertheless reveal the top-down nature of anti-Black discrimination; it can also speak to the Black experience not necessarily through what is said but what is left unsaid. For instance, Clarkson mentions he heard many other stories "of a similar nature."<sup>6</sup> The fact that one man alone could have heard multiple similar accounts shows how many other Black people's illegal enslavement must have gone unrecorded. Professor Whitfield notes "there was an extremely thin line between free and enslaved [B]lack people."<sup>7</sup> Moreover, "The line between [B]lack servants and [B]lack slaves was [also] extremely fluid and could easily be transgressed and manipulated."<sup>8</sup> It is such fluidity that allowed so many illegal enslavements to go unpunished

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<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> 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, <https://doi.org/10.3138/chr-2019-0050>.

<sup>6</sup> "John."

<sup>7</sup> Whitfield, "White Archives."

<sup>8</sup> Ibid.

or unacknowledged. The law system's failure thus created precedents for not treating Black people with the due process they deserved. Nevertheless, law professionals were aware of the potential for judicial precedents to solidify discriminatory practices in society. For instance, the grand jury of Nova Scotia once expressed concern about the general "illegality" of an owner who carried off his indentured servant to the West Indies and treated them like a slave.<sup>9</sup> However, rather than expressing empathetic concern, the jury was more worried it may prevent "the negros from binding out their children in the future."<sup>10</sup> As Professor Whitfield notes, the appalling treatment of slaves and Black indentured servants were so similar that they "regularly married and ran away together."<sup>11</sup> Thus, despite freeing the boy from potential enslavement, the jury sought to preserve the indentured servitude of future Black generations - in many ways an extension of slavery itself. While courts gradually became more sympathetic over time, this early discrimination was enough to entrench it within Canadian society, if not through the law system, than through Canada's popular imagination.

White people developed a sense of superiority as a partial consequence of these court decisions. As courts became more sensitive to Black people's illegal enslavement, slaveholders began petitioning for increased skepticism toward Black people, in line with many previous court decisions, to ensure they held on to the enslaved "property" that were apparently "leaving their service."<sup>12</sup> The petitioners desired that free Black people be required to "produce the certificate

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<sup>9</sup> "Case of a Black Boy Carried Off to the West Indies, 22 April 1794," *African Nova Scotians in the Age of Slavery and Abolition*, virtual exhibit, Archives of Nova Scotia (<https://archives.novascotia.ca/africanns/archives/?ID=52&Page=200402093>, accessed 24 September, 2021).

<sup>10</sup> Ibid.

<sup>11</sup> Harvey Amani Whitfield, "Runaway Advertisements and Social Disorder in the Maritimes: A Preliminary Study," in *Violence, Order, and Unrest: A History of British North America 1749-1876*, ed. Mancke, Bannister, McKim, and See (University of Toronto Press, 2019), 230, <https://books.scholarsportal.info/uri/ebooks/ebooks4/upress4/2019-05-07/1/9781487531607>.

<sup>12</sup> "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/africanns/archives/?ID=64>, accessed 24 September 2021).

of his emancipation, or to show that he was born of free parents or at the least, to prove that at some former period of his life he exercised the rights of a free person."<sup>13</sup> Slaveholders' calls for continued discrimination at the sole benefit of themselves, through a "show your papers society," shows systemic racism in action and demonstrates how Black people struggled to escape the bondage of their association to slavery and the racist consequences that emerge from it. The legislative bodies were themselves bolstered by notions of white supremacy. For example, in 1815, the Nova Scotia House of Assembly attempted to prohibit Black refugee immigration exclusively: "we beg leave respectfully to suggest, that the proportion of Africans already in this country is productive of many inconveniences; and that the introduction of more must tend to the discouragement of white labourers and servants, as well as to the establishment of a separate and marked class of people."<sup>14</sup> The House explicitly states they consider "Africans" a "separate and marked class of people" - echoing the social divisions of slavery - and that they would much rather have "white labourers and servants," whom they are afraid Black settlers would otherwise scare off.<sup>15</sup> Their attempts at active legal segregation further demonstrate how association to slavery continued to haunt the Black population, unable to escape the trap of white people considering them separate, unequal, and, as the House puts it, "burthensome to the Public."<sup>16</sup>

The legacy of anti-Black racism is a persistent issue today. As Professor Charmaine Nelson notes in an online lecture, a key aspect of African slavery was the normalization of the idea that white people are biologically superior and Black people are fit only for perpetual

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<sup>13</sup> Ibid.

<sup>14</sup> "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 5 October 2021).

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

bondage and exploitation.<sup>17</sup> What began as a profitable means of justifying African enslavement quickly became a fact of life that white people continued to justify by portraying Black people as evil and inhuman.<sup>18</sup> The British Empire abolished slavery in 1833 - less than two hundred years ago.<sup>19</sup> Therefore, the negative connotations surrounding Black people and their association with slavery have only had to pass down a few generations. Nevertheless, with movements like Civil Rights in the nineteen-sixties and Black Lives Matter in the twenty-first century, there have been extraordinary strides toward Black emancipation. More recent awareness has been aided in part by developments in technology - Professor Nelson is better able to disperse her knowledge on the topic through virtual communication. However, the socio-cultural conditioning that deemed Black people inferior still echoes in contemporary society. Explicit racism endures, but the most common element of anti-Black racism today derives from the implicit bias that undergirds Canadian society as an extension of historic social conditioning. For instance, according to the Canadian Civil Liberties Association, "Canadian police stop, search, and question Black Canadians at higher rates than members of other racial groups."<sup>20</sup> They are "seriously injured and killed" by police at higher rates, as well.<sup>21</sup> Between 2013-2017, Black Canadians accounted for "70% of police shootings that resulted in civilian death" and, as of 2016, "7.2% of the federal prison population," despite making up only 3.5% of the Canadian population overall.<sup>22</sup> Thus, while discussion of systemic racism often points to its entrenchment within Canadian

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<sup>17</sup> Charmaine Nelson, "Grappling with the Colonial Archive: An Introduction to Canadian Slavery," recorded lecture at NSCAD University (<https://www.facebook.com/NSCAD/videos/764132501175279>, March 2021).

<sup>18</sup> Ibid.

<sup>19</sup> Kyle Brown, "Canada's Slavery Secret: The Whitewashing of 200 Years of Enslavement," CBC (CBC Radio, February 18, 2019), <https://www.cbc.ca/radio/ideas/canada-s-slavery-secret-the-whitewashing-of-200-years-of-enslavement-1.4726313>.

<sup>20</sup> "Anti-Black Racism in Canada's Criminal Justice System," Canadian Civil Liberties Association, accessed November 28, 2021, <https://ccla.org/wp-content/uploads/2021/08/CCLA-Anti-Black-racism-criminal-justice-system.pdf>.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

institutions, it is essential to remember that they are not alone to blame. Canadian institutions have made positive strides since the end of slavery toward ending anti-Black racism, but it is people, with their own biases, that run these institutions. Early institutionalized discrimination fostered white supremacy and mistrust toward Black Canadians, but Canadian institutions have evolved. With sets of laws like the *Canadian Charter of Rights and Freedoms*, on paper, all Canadians, regardless of race, are now guaranteed civic equality. Nevertheless, it is much easier to reform a society's laws than to reform society itself. Discrimination - such as widespread mistrust of Black people in the criminal justice system - still exists because Canada is still grappling with the socio-cultural conditioning implemented by its institutions only a few generations ago. Therefore, when addressing "systemic" racism, it is imperative not to consider it an exclusively institutional issue but rather "systemic" as in the social system as a whole.

While Canadian slavery officially ended in 1833 and Black people's legal treatment has gradually improved over the centuries, the law system helped entrench slavery's legacy of anti-Black racism through court decisions and legislation, fostering a sense of superiority among Canada's white population whose ramifications persist to this day. Top-down institutional conditioning initially embedded this notion of white supremacy within Canada. However, as Canadian institutions gradually became more progressive, systemic racism in Canadian society became dominated by the descendants of that conditioning. A society where the potential biases of those who comprise Canada's institutions may abuse their positions and indirectly shape the biases of broader society, who, in turn, whether they refute or validate those biases, will eventually shape the institutions of the next generation.