

Cold Case:

The Forgotten Story of how Black People lost Their Identity to the Judicial System

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Many have heard of the infamous Lewis and Clark expedition from 1804 to 1806. However, history books have failed to bring notice to York, an enslaved man who was also on the journey.¹ This event takes place in what is now known as America, but Canadian history books also fail to demonstrate slavery's significance in Canada's past. Despite the freedom granted to the loyalists, slavery was still present, and freeborns ran the risk of re-entering slavery. This paper argues that although the government judicial system advertised equality, not everyone was treated fairly under the court of law. The British offered limited and disproportionate rights for Black people living along the British lines. The legal system used in this period in what is now known as Canada was racist and upheld racist hierarchies. I will be using documents from The Nova Scotia Archives and works by Harvey Amani Whitefield to help me prove how our country's historical ties to slavery interconnect with our laws and legal system. With an extensive comprehension of our country's role in slavery, we can better understand the racial differences and injustices present in today's society.

Black people did have certain rights, but insufficient to get justice. One example of injustice lies in the case of Elizabeth Watson. Elizabeth was born free but sold as a slave named 'Phillis' to an abusive owner, William Proud.² In 1779, Elizabeth attempted to sue Proud for unlawful confinement and damages but lost.³ Elizabeth Read testified that she was a free woman

¹ Parks, Shoshi. "York Explored the West with Lewis and Clark, but His Freedom Wouldn't Come until Decades Later." Smithsonian.com. Smithsonian Institution, March 8, 2018. <https://www.smithsonianmag.com/history/york-explored-west-lewis-and-clark-his-freedom-wouldnt-come-until-decades-later-180968427/>.

² "*Watson alias Phillis v. Proud* (judgement)," *African Nova Scotians in the Age of Slavery and Abolition*, virtual exhibit, Archives of Nova Scotia (<https://archives.novascotia.ca/africans/archives/?ID=14>, accessed 17 October 2021).

³ "*Watson alias Phillis v. Proud* (judgement)."

and Samuel Laha testified that he was her previous owner.⁴ The vast legal implications centralize under the equivalency of evidence on both sides, but the disproportionate credibility received. The document found in the Nova Scotia Archives stated, “William Proud do recover and hold the said Negro woman Phillis falsely calling herself Elizabeth Watson.”⁵ Despite the same level of evidence, it was inconceivable to have Elizabeth’s claim be true. Although the case centered around a he-said-she-said argument, the man still won.⁶ It’s hard to distinguish if Phillis lacked credibility because she was Black or a woman. It was not permissible to enslave a freeborn, in Elizabeth’s case, being free did not mean treatment as such. Nevertheless, the judicial system that advocated equality failed to serve Elizabeth justice.

In defiance of inequalities, some communities fought back the government in search of fair treatment. One such example was the land petition from Black settlers of Manchester on October 7, 1786, found in the Nova Scotia Archives. Despite being there for two years, the free Black settlers lived in poverty regardless of having been promised otherwise, and the text mentions that “they [other immigrants] may have some we have never received any.”⁷ These Black settlers never received tools, allotment of clothes, boards to build houses, lands, or lots.⁸ The treatment of these communities further shows how Black people were at the bottom of priorities. There was a large influx of Black refugees at this point, and the government was

⁴ *Watson alias Phillis v. Proud* (judgement).”

⁵ *Watson alias Phillis v. Proud* (judgement).”

⁶ *Watson alias Phillis v. Proud* (judgement).”

⁷ “Land petition from black settlers of Manchester,” *African Nova Scotians in the Age of Slavery and Abolition*, virtual exhibit, Archives of Nova Scotia (<https://archives.novascotia.ca/africanns/archives/?ID=36>, accessed 17 October 2021)

⁸ “Land petition from black settlers of Manchester.”

unprepared for such an amount of incomers.⁹ Rather than rationing the resources to ensure everyone received an equal share, the government chose to give the resources to the immigrants of their choosing. This choice is possibly a way to ensure white power because surely malnourished and impoverished families will be preoccupied with keeping themselves alive rather than getting an education or protesting for change. However, they did have sufficient knowledge to write the petition and fight back. Even so, many refugees were seeking freedom from slavery, and that life described was better than a life of enslavement. Nevertheless, just because it was better than an alternative does not translate to a justifiable state. Once more, promises met disproportionate rights and limitations, demonstrating how the judicial system upheld racist hierarchies.

The interrelation between slavery and the legal system is more revealing when looking at the context. The case of a Black boy carried off to the West Indies on April 22, 1794, is displayed in the Nova Scotia Archives. It explains that Peter, a Black indentured servant, had his services sold to Zebulon Perkins, who illegally brought him to the West Indies, claiming he was “notoriously bad” and sold his time to someone else.¹⁰ The grand jury complains to the magistrates in Queens Country, seemingly of the illegal transportation of said boy.¹¹ However, the grand jury was concerned that permitting black servants to be treated as slaves would preclude the possibility of free black people from “binding out their children in future.”¹² With

⁹ “Land petition from black settlers of Manchester.”

¹⁰ “Case of a black boy carried off to the West Indies,” *African Nova Scotians in the Age of Slavery and Abolition*, virtual exhibit, Archives of Nova Scotia (<https://archives.novascotia.ca/africans/archives/?ID=52>, accessed 17 October 2021)

¹¹ “Case of a black boy carried off to the West Indies.”

¹² “Case of a black boy carried off to the West Indies.”

the abolishment of slavery, it's reasonable to believe that the British empire might have resorted to other methods of labor and exploitation to satisfy their needs and replace the income lost to the slave trade. If parents were to hear about the unlawful treatment of indentured servants, they likely would stop binding out their children. If this were the case, Britain could lose yet another source of income, so Governor Wentworth advised Perkins to return to Nova Scotia with the boy.¹³ Laws did not form based on forbidding reprehensible actions, rather preventing undesirable outcomes, making the laws unjust and biased.

Free Black people did not consistently receive promised treatment. Kept in the Nova Scotia Archives, a publication of April 16, 1834, regards an act to prevent the Clandestine Landing of Liberated Slaves and other Persons arriving in Nova Scotia. After the emancipation in other areas of the world, the government feared a large influx of immigration, so they imposed rules for each incomer to follow and adhere to and the punishments if they failed to comply.¹⁴ The document groups slaves, freed slaves, and convicts all into one category of a threat.¹⁵ Furthermore, the law made it so that they may evaluate their worth upon arrival, making it rather impossible to differentiate between being a slave or a free man until they arrive.¹⁶ The meaning of free is completely redefined through this act, as it's clear that being free does not necessarily mean free. So, in some cases, even the legal status of free was not sufficient when a white legal system thought otherwise. The vile story was that many free Black people were more than likely to face re-enslavement. If freedom was so takable, maybe equality could never have been a

¹³ "Case of a black boy carried off to the West Indies."

¹⁴ "An act to prevent the clandestine landing of liberated slaves..." *African Nova Scotians in the Age of Slavery and Abolition*, virtual exhibit, Archives of Nova Scotia (<https://archives.novascotia.ca/africans/archives/?ID=87>, accessed 17 October 2021)

¹⁵ "An act to prevent the clandestine landing of liberated slaves..."

¹⁶ "An act to prevent the clandestine landing of liberated slaves..."

possibility. The only equality experienced by free Black people was that to convicts and the enslaved.

Unfortunately, slavery was not only forced labour, but also trickery and manipulation. Harvey Amani Whitefield dives into the importance of retrieving the lost stories of slaves in his work, *White Archives, Black Fragments: Problems and Possibilities in Telling the Lives of Enslaved Black People in the Maritimes*. Slaveowners piggybacked off the work of slaves, allowing them to participate in activities unavailable to slaves, such as education and politics. Without access to basic education, it was much easier for slaveowners to take advantage and trick free Black people into slavery, such as the case of Lydia Jackson, a woman left alone by her husband struggling to sustain herself.¹⁷ In her dire situation, she agreed to be Henry Hedley's wife's companion only for Hedley telling her to pay rent or bind herself to him for seven years.¹⁸ She fought back and eventually agreed to one year.¹⁹ Unfortunately, Hedley took advantage of her inability to read and tricked her into signing the indenture for thirty-nine years.²⁰ Slaves had their identity stripped from their lives; history even silenced their voices. Ironically, the legal system that stripped them of their freedom and identity is responsible for preserving their stories in history through cases and lawsuits. However, white men wrote these historical legal documents about Black people, not the Black people themselves. The judicial system not only legalized the inhuman act of enslaving other humans but further made it close to impossible to escape.

¹⁷ 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.

¹⁸ Whitfield, "White Archives, Black Fragments," 323-345.

¹⁹ Whitfield, "White Archives, Black Fragments," 323-345.

²⁰ Whitfield, "White Archives, Black Fragments," 323-345.

Those that experienced enslavement endured cruelty and searched for freedom. Harvey Amani Whitefield illustrates the power of these runaways in history through his work, *Runaway Advertisements and Social Disorder in the Maritimes: A Preliminary Study*. If an escape was unsuccessful, slaves used it as a bargaining tactic to force the slaveowner into making reforms, making slavery seem untenable and unstable.²¹ Slaves, considered more as objects than human beings, even lost the most basic part of their identity when forced into slavery, their name. It's noticeable that runaway notices for women were so small-scale because slave owners assumed they would willingly return.²² It may seem that women had a better chance of escaping if slave owners were too hesitant to pay for notice, but they faced many obstacles. Unlike men, women did not have the option to work at sea, and they chose to keep their families together at all costs.²³ The lack of opportunity to sustain oneself after escaping made it challenging to stay free. Ensuring slavery continued is evident when Hopeeld took the status of his enslaved mother instead of his free father because they were not legally married.²⁴ Oddly enough, in a world where women had limited rights, they acknowledged women over men only to maintain slavery. It's also questionable how legal marriages could occur, if slaves did not hold a place in society. The social structure of slavery was a vicious cycle that locked people inside. If slaves pursued escape, they had limited or nonexistent rights, especially for women.

²¹ Harvey Amani Whitefield, "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).

²² Whitefield, "Runaway Advertisements and Social Disorder in the Maritimes," 214-235.

²³ Whitefield, "Runaway Advertisements and Social Disorder in the Maritimes," 214-235.

²⁴ Whitefield, "Runaway Advertisements and Social Disorder in the Maritimes," 214-235.

Canada has since abolished slavery. However, there are still numerous cases of injustices and racism towards people of color. According to Statistics Canada, police recorded 12,220 racially motivated incidents in 1995 in Canada.²⁵ However, the BCS estimated that victims experienced approximately 382,000 racially motivated incidents in the same year.²⁶ This drastic difference may be due to the distrust of the legal system after a history their race experienced. Canada has a history of advertising equality when not everyone was treated fairly under the court of law and upholding racial hierarchies. That part of history can not be erased or forgotten, and the lack of acknowledgment further divides and creates mistrust. Slavery also erased identity, and the implications of not knowing one's lineage are something Black Canadians face every day and forever incomprehensible to white people. Unfortunately, similar to York, who the history books disregarded, Canadian history also disregards the history of Black Canadians.

²⁵ Janhevich, Derek E. "Hate Crime in Canada: An Overview of Issues and Data Sources." Statistics Canada, January 2001.

<https://www150.statcan.gc.ca/n1/en/pub/85-551-x/85-551-x1999000-eng.pdf?st=Wv3GUOxw>.

²⁶ Janhevich, "Hate Crime in Canada."