Cold Case:

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

Jennifer MacAdam

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 W

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 8 “Land petition from black settlers of Manchester.” 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) 6 Watson alias Phillis v. Proud (judgement).” 5 Watson alias Phillis v. Proud (judgement).” 4 Watson alias Phillis v. Proud (judgement).”

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,

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.

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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

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

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

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/africanns/archives/?ID=87 , accessed 17 October 2021)

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

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

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.

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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.

26 Janhevich, “Hate Crime in Canada.”

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.