

The Struggle over Slavery in the Maritime Colonies

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Article abstract

This article closely examines the ways in which masters and slaves struggled to define slavery in the Maritimes. Building on the work of previous scholars, special attention is given to the role that African-descended peoples played in ending slavery with the help of local abolitionists and sympathetic judges. The end of slavery brought to the forefront a new and more virulent form of racism that circumscribed opportunities for free black communities in the region.

The Struggle over Slavery in the Maritime Colonies

HARVEY AMANI WHITFIELD

Cet article examine attentivement comment maîtres et esclaves s'affrontèrent pour définir l'esclavage dans les provinces Maritimes. S'appuyant sur des recherches universitaires antérieures, il accorde une attention particulière au rôle que jouèrent des personnes d'ascendance africaine dans l'abolition de l'esclavage, avec l'aide d'abolitionnistes de la région et de juges sympathiques à leur cause. La fin de l'esclavage mit à l'avant-plan une nouvelle forme de racisme plus virulente qui limitait les perspectives des communautés de Noirs libres de la région.

This article closely examines the ways in which masters and slaves struggled to define slavery in the Maritimes. Building on the work of previous scholars, special attention is given to the role that African-descended peoples played in ending slavery with the help of local abolitionists and sympathetic judges. The end of slavery brought to the forefront a new and more virulent form of racism that circumscribed opportunities for free black communities in the region.

BETWEEN 1783 AND THE 1820s, SLAVES AND OWNERS struggled to define the essence, meaning, contours, and extent of slavery.¹ The study of slavery in Canada is an uncomfortable subject. In popular understanding, it has been easier to envision Canada as the protector of fugitive slaves rather than as the home of its own system of slavery. In her study, *The Hanging of Angélique*, Afua Cooper noted that slavery “has disappeared from Canada’s historical chronicles, erased from its memory and banished to the dungeons of its past.”² Yet, despite this lapse in historical memory, the historical analysis of Cooper and others tells a very different story. This article extends the existing scholarship by exploring the ways in which slavery ended in the Maritime colonies only to be succeeded by a persistent racism.

1 For recent treatments of Maritime slavery, see Jennifer Harris, “Black Life in a Nineteenth Century New Brunswick Town,” *Journal of Canadian Studies* 46, no. 1 (Winter 2012): 138-66; Harvey Amani Whitfield, “Slavery in English Nova Scotia,” *Journal of the Royal Nova Scotia Historical Society* 13 (2010): 23-40; and Harvey Amani Whitfield, “Black Loyalists and Black Slaves in Maritime Canada,” *History Compass* 5, no. 6 (November 2007): 1980-97. The most recent treatments of the Loyalist Diaspora are Jerry Bannister and Liam Riordan, eds., *The Loyal Atlantic: Remaking the British Atlantic in the Revolutionary Era* (Toronto: University of Toronto Press, 2012), and Maya Jasanoff, *Liberty’s Exiles: American Loyalists in the Revolutionary World* (New York: Random House, 2011). I would like to thank the four *Acadiensis* peer reviewers for their helpful criticism.

2 Afua Cooper, *The Hanging of Angélique: The Untold Story of Slavery in Canada and the Burning of Old Montréal* (Athens: University of Georgia Press, 2007), 7.

There are several excellent studies of slavery and the lives of slaves in Canada, including the work of David Bell, Barry Cahill, Afua Cooper, Ken Donovan, Brett Rushforth, T.W. Smith, W.A. Spray, Marcel Trudel, James Walker, Robin Winks, and others. Historians of the Black Loyalists, such as Simon Schama and Ellen Wilson, have also touched on slavery and its role within black society in the Maritimes. Despite all of their efforts, though, slavery has not become part of the national narrative. This makes sense because the historiography of slavery in Canada still lacks the basic overviews that allowed scholars of American slavery to pursue complicated topics. The field has not produced historical narratives that can compare to the work of Kenneth Stampp, Eugene Genovese, Herbert Gutman, and Ira Berlin.³

- 3 The scholarship of slavery in Canada has grown tremendously in the last 20 years. See Kenneth Donovan, "Slaves and Their Owners in Île Royale, 1713-1760," *Acadiensis* XXV, no. 1 (Autumn 1995): 3-32; Kenneth Donovan, "A Nominal List of Slaves and Their Owners in Île Royale, 1713-1760," *Nova Scotia Historical Review* 16, no. 1 (June 1996): 151-62; Kenneth Donovan, "Slaves in Île Royale," *French Colonial History* 5 (2004): 25-42; D.G. Bell, "Slavery and the Judges of Loyalist New Brunswick," *University of New Brunswick Law Journal* 31 (1982): 9-42; Barry Cahill, "Habeas Corpus and Slavery in Nova Scotia: *R v. Hecht, ex parte Rachel*, 1798," *University of New Brunswick Law Journal* 44 (1995): 179-209; Barry Cahill, "Slavery and the Judges of Loyalist Nova Scotia," *University of New Brunswick Law Journal* 43 (1994): 73-135; Cooper, *The Hanging of Angélique*; Brett Rushforth, "'A Little Flesh We Offer You': The Origins of Indian Slavery in New France," *William and Mary Quarterly* 60, no. 4 (October 2003): 777-808; Brett Rushforth, "Slavery, The Fox Wars and the Limits of Alliance," *William and Mary Quarterly* 63, no. 1 (January 2006): 53-80; Brett Rushforth, *Bonds of Alliance: Indigenous and Atlantic Slavery in New France* (Chapel Hill: University of North Carolina Press, 2012); Harvey Amani Whitfield and Barry Cahill, "Slave Life and Slave Law in Colonial Prince Edward Island, 1769-1825," *Acadiensis* XXXVIII, no. 2 (Summer/Autumn, 2009): 29-51; and Marcel Trudel, *L'esclavage au Canada Français: Histoire et conditions de l'esclavage* (Quebec: Presses Universitaires Laval, 1960). On the Black Loyalists specifically, see Ellen Gibson Wilson, *The Loyal Blacks* (New York: Capricorn Books, 1976); James W. St. G. Walker, *The Black Loyalists: The Search for a Promised Land in Nova Scotia and Sierra Leone, 1783-1870* (1976; repr. Toronto: University of Toronto Press, 1992); Gary B. Nash, "Thomas Peters: Millwright and Deliverer," in *Struggle and Survival in Colonial America*, ed. David G. Sweet and Gary B. Nash (Berkeley: University of California Press, 1981); Mary Louise Clifford, *From Slavery to Freedom: Black Loyalists After the American Revolution* (Jefferson, NC: McFarland, 1999); John W. Pulis, ed., *Moving On: Black Loyalists in the Afro-American World* (New York: Garland, 1999); Simon Schama, *Rough Crossings: Britain, the Slaves and the American Revolution* (2005; repr. New York: Harper Collins, 2006); Cassandra Pybus, *Epic Journeys of Freedom: Runaway Slaves of the American Revolution and Their Global Quest for Liberty* (Boston: Beacon, 2006); Christopher H. Fyfe, "Thomas Peters: History and Legend," *Sierra Leone Studies*, no. 1 (December 1953): 4-13; Anthony Kirk-Greene, "David George: The Nova Scotian Experience," *Sierra Leone Studies*, no. 14 (December 1960): 93-120; Benjamin Quarles, "Lord Dunmore as Liberator," *William and Mary Quarterly* 15, no. 4 (October 1958): 494-507; George A. Rawlyk, "The Guysborough Negroes: A Study in Isolation," *Dalhousie Review* 48, no. 1 (Spring 1968): 24-36; Phyllis R. Blakeley, "Boston King: A Negro Loyalist Who Sought Refuge in Nova Scotia," *Dalhousie Review* 48, no. 3 (Autumn 1968): 347-56; Evelyn B. Harvey, "The Negro Loyalists," *Nova Scotia Historical Quarterly* 1, no. 3 (September 1971): 181-202; Mary Beth Norton, "The Fate of Some Black Loyalists of the American Revolution," *Journal of Negro History* 58, no. 4 (October 1973): 402-26; John N. Grant, "Black Immigrants into Nova Scotia, 1776-1815," *Journal of Negro History* 58, no. 3 (July 1973): 253-70; Barry Cahill, "The Black Loyalist Myth in Atlantic Canada," *Acadiensis* XXIX, no. 1 (Autumn 1999): 76-87; and James W. St. G. Walker, "Myth, History, and Revisionism: The Black Loyalists Revisited," *Acadiensis* XXIX, no. 2 (Autumn, 1999): 88-105. See also Kenneth Stampp, *The Peculiar Institution: Slavery in the Ante-*

The most basic aspects of Maritime slavery remain unknown. As a result, the study of regional slavery is an exercise in documenting the essential contours of the institution before we can initiate more nuanced investigations. Maritime historians have not examined the slaveholding classes, slave occupations, owner/slave relations, or the formation and perpetuation of slavery. Historians have said little about female slaves and the gendered division of labour. Further, studies have not determined whether Orlando Patterson's concept of "social death" is applicable to slavery in the Maritimes nor do historians know enough about the maintenance and retention of African cultures among slaves.⁴

These lacunae can be explained partially by the fact that historians do not have the type of rich documentation that can be found in parts of the American South and British Caribbean, such as ledger books, plantation documents, diaries, journals, or newspapers and magazines dedicated to slavery issues. To my knowledge, there is no Maritime equivalent to the Butler Plantation Papers, Thomas Thistlewood's diary, or the *Southern Agriculturist*. Instead, information must be pieced together from slave advertisements, bills of sale, colonial musters, court records, and oral traditions passed down to writers who recorded these traditions in the late 19th and early 20th centuries. The history of slavery in the Maritimes is necessarily uncovered by finding small mentions of bondage embedded in newspapers, probate records, court documents, local township books, and church records.

The best studies of Maritime slavery focus on its marginality and demise, but this study takes another approach to the institution's end.⁵ The focus on slavery's peripheral existence and eventual death is understandable, but it underestimates the role black people played in freeing themselves from bondage. This article elucidates two major points about the struggle over slavery in the Maritime colonies. First, black people had a great deal of agency in freeing themselves. Judges chipped away at the system, but people of African descent initiated the process by running away from their owners at great personal risk. Second, the historical corollary of the vagueness of the legal basis for slavery, and slavery's slow erosion, was the emergence of deeply

bellum South (New York: Knopf, 1956); Eugene Genovese, *Roll, Jordan, Roll: The World the Slaves Made* (New York: Pantheon, 1976); Herbert Gutman, *The Black Family in Slavery and Freedom, 1750-1925* (New York: Pantheon 1974); and Ira Berlin, *Many Thousands Gone: The First Two Centuries of Slavery in North America* (Cambridge, MA: Harvard University Press, 1998).

4 Orlando Patterson, *Slavery and Social Death: A Comparative Study* (Cambridge: Harvard University Press, 1982). For a discussion of agency, structure, and social death, see Vincent Brown, "Social Death and Political Life in the Study of Slavery," *American Historical Review* 114 (December 2009): 1231-49. On the role of African retentions and belief systems in the Americas, see John Thornton, *Africa and Africans in the Making of the Atlantic World, 1400-1800* (Cambridge: Cambridge University Press, 1998); Sterling Stuckey, *Slave Culture: Nationalist Theory and the Foundation of Black America* (New York: Oxford University Press, 1987); Gwendolyn Midlo Hall, *Slavery and African Ethnicities in the Americas: Restoring the Links* (Chapel Hill: University of North Carolina Press, 2005); Walter Rucker, *The River Flows On: Black Resistance, Culture, and Identity Formation in Early America* (Baton Rouge: Louisiana State University Press, 2008); and Frederick C. Knight, *Working the Diaspora: The Impact of African Labor on the Anglo-American World, 1650-1850* (New York: New York University Press, 2010).

5 I am not including Kenneth Donovan's work in this statement, which takes a holistic approach to slavery in Île Royale. See the previous footnote for a listing of Donovan's works.

entrenched and widespread racism. This racism infected the attitudes of whites within the region toward black people, and they were seen as nothing better than cheap labour (as illustrated by the treatment of the War of 1812 Black Refugees). Indeed, the function and result of slavery in the Maritimes was to create race – that is, to define in a reified fashion the place and status of people of African descent. If the region could not have slavery, it would certainly have racial ideas that attempted to circumscribe the opportunities open to black people. Yet there were two sides to this coin. As a result of the racism and isolation experienced by black people, several self-reliant and independent communities emerged to support themselves against the flood tide of white discrimination. These communities developed family and kinship networks, churches, and community organizations.⁶

Slavery had existed in the Maritimes since the 17th century. It grew in Ile Royale under the French Regime, from 1713 to 1758, to a total of about 300 slaves at its height. However, after the British takeover, the number of slaves remained relatively small until 1783. During and after the American Revolution, Loyalists brought an undetermined number of slaves to the Maritime colonies. In 1784, Robert Morse estimated that there were 1,232 “servants” at the Loyalist settlements. Exactly how many of these servants were slaves remains elusive. The slaves originated from every part of colonial America, with strong contingents from New England and the Middle Colonies (New York, New Jersey, and Pennsylvania), while others came from the Chesapeake and Lower South. These slaves carried with them traditions, cultures, family/kinship networks, and occupational experiences to the Maritime colonies. They drew upon this vast reservoir of experience to ease their adjustment to their new home. The majority of slave-owners and slaves initially settled in Shelburne, Saint John, and the Annapolis region. Slaveholders usually owned one or two slaves. Although the wealthy were well represented among slaveholders, many came from middling and artisanal backgrounds (which reflected the growth of slavery, especially in northern cities, after 1750). Most slaves endured close contact with their owners – they toiled, ate, and socialized together. In terms of work, slaves laboured on farms, in artisan shops, and on the docks. The Maritime colonies were societies with slaves, and the institution could be found throughout the region.⁷

Although references to slaves can be found in estate papers, church records, newspapers, private letters, bills of sale, probate records, and in the court system, Nova Scotia and New Brunswick did not have statute law related to slavery.⁸ Owners did not believe that slave codes were necessary because they saw enslavement as entrenched in common law. The Prince Edward Island (PEI)

6 Harvey Amani Whitfield, *Blacks on the Border: The Black Refugees in British North America, 1815-1860* (Burlington: University of Vermont Press, 2006).

7 Berlin, *Many Thousands Gone*; Whitfield, “Black Loyalists and Black Slaves”; Whitfield, “Slavery in Nova Scotia”; Donovan, “Slaves in Île Royale”; Harvey Amani Whitfield, “The American Background of Loyalist Slaves,” *Left History* 14, no. 1 (Spring 2009): 58-87.

8 Bell, “Judges of Loyalist New Brunswick,” 9-42; Cahill, “Slavery and the Judges,” 73-135; Cahill, “*Habeas Corpus*,” 179-209; I. Allen Jack, “The Loyalists and Slavery in New Brunswick,” *Proceedings of the Royal Society of Canada* 4 (1898): 137-85; Winks, *Blacks in Canada*, 24-60.

legislature, on the other hand, passed “An Act, *declaring that Baptism of SLAVES shall not exempt them from BONDAGE.*”⁹ The absence of any statute in Nova Scotia or New Brunswick that even “recognized or regulated” slavery could be, as Bell has shown, “greatly to the slaves’ advantage.” Theoretically, in New Brunswick, slaves could marry white people, they could provide evidence in court, and “were protected by the same criminal law against murder or bodily harm.”¹⁰ Black people could further subvert the institution by protesting their enslavement or re-enslavement in court. During the late 18th and early 19th centuries, slaves ran away and sympathetic whites (one could use the term abolitionists) slowly challenged the alleged rights of owners to possess slaves. Superior court judges in Nova Scotia, first Thomas Strange and then Sampson Salter Blowers, slowly chipped away at slavery and eventually the institution had largely ceased to exist by the end of the 1820s. It is important to note, however, the bifurcation that existed within the Nova Scotia judiciary. In Shelburne, especially before 1792, local courts re-enslaved black people and reinforced slavery generally. New Brunswick judges were also less sympathetic to the plight of slaves. Nevertheless, slavery slowly died out as various forms of limited-term servitude replaced chattel slavery. In 1825, Prince Edward Island repealed the 1781 Act. As slavery was being eroded, however, the migration of thousands of blacks to the region during and after the War of 1812 had created the conditions that fostered a new type of racism and bitterness. As in New England, the gradual emancipation of slaves went hand in hand with the emergence of a virulent form of racism whereby people of African descent faced various forms of discrimination combined with attempts to relocate black people out of the region.¹¹

Slave-owners faced several problems that eroded the system of human bondage. In 1784, smarting at the escape of several of his “Negroes,” Thomas Rogers wrote angrily to a New Brunswick newspaper. He identified one of the major problems facing Loyalist slaveholders, stating that “for the better security of indented servants, slaves, &c there [needs to be] a law of the province enacting that any person harbouring, concealing, or otherwise encouraging indented servants, apprentices or slaves from their master or their service, for every such offence shall forfeit the sum of ten pounds, &c.”¹² The problem, as Rogers saw it, rested on New Brunswick’s failure to have enacted laws preventing local residents from protecting fugitive slaves and runaway indentured servants. Nineteen years later, seething with frustration at the case of James DeLancey’s slave Jack, attorney Joseph Aplin (who served as MLA for Barrington Township and as the attorney general for PEI) expressed similar disgust in a letter to James Stewart (solicitor general, attorney, and MLA for Halifax):

9 An Act, *declaring that Baptism of SLAVES shall not exempt them from BONDAGE*, 1781, c. 15, Public Archives and Records Office of Prince Edward Island (PAROPEI), Charlottetown, Prince Edward Island; Whitfield and Cahill, “Slave Life and Slave Law,” 29-51.

10 Bell, “Judges of Loyalist New Brunswick,” 18, 19.

11 Joanne Pope Melish, *Disowning Slavery: Gradual Emancipation and “Race” in New England, 1780-1860* (Ithaca: Cornell University Press, 1998).

12 *Royal Saint John’s Gazette*, 13 May 1784.

It appears by your Letter, that our Friend [Richard John] Uniacke stated one of these two points to be “That it appearing in Evidence that the Servant Jack was a Slave, and there being no Slaves in [Nova Scotia], the Plaintiff could not recover the Loss of his Service.” Surely, if there was ever a Bull born on Earth, this must be one; for I cannot possibly conceive, how this same Jack could be proved to be a Slave in a Province where no Slavery exists.¹³

Slaves and slaveholders attempted to negotiate an understanding of slavery: who was a slave, who could become enslaved (and re-enslaved), and under what circumstances? Slaves, white abolitionists, and superior court judges slowly eroded the power of slaveholders through a combination of the enslaved running away, judicial decisions, and personal manumissions. In examining court cases and legislative bills related to slavery, one runs the risk of unduly generalizing from specific incidents or ideas to more widely held feelings and thoughts about slavery. Slaves who made it to court were by definition extraordinary in that their lives were brought into the public spotlight. The majority of slaves never received such attention, so the stories of slavery that emerge from court documents might not necessarily reflect wider patterns of bondage, master/slave relations, and slave life. These same court cases, however, offer historians the best evidence we have to reconstruct aspects of slavery.

Defining slavery

Slaveholders believed that they were entitled to own blacks because the latter were a form of personal property. One group of Nova Scotian slaveholders summed up this position in a petition to the provincial government: “But, when your petitioners came to the age of discretion, they found that His Majesty’s Colonial Subjects possessed the right of holding a property in Negroes upon the same grounds that they possessed the right of holding any other species of property.”¹⁴ In a pro-slavery pamphlet, written by “GENTLEMEN OF THE LAW,” the authors traced the right of slaveholders to various acts of Parliament, including the chartering of the African Company. They further admitted that the only time the word “slave” was used by the Nova Scotia Assembly occurred in the 1762 Act for Regulating Inn-Keepers.¹⁵ This act was neutral in regards to slavery in the region. It mentioned the term “Negro Slave” but, as Barry Cahill has noted, this “was incidentally mentioned as part of an enumeration of social subclasses [and] was immaterial to the legality or otherwise of Black Slavery.”¹⁶

By the late 1780s, slaveholders realized that the basis for their ownership of black property might be tenuous without a slave code. They attempted on several occasions to have legislation passed that would have given slavery statutory recognition. These

13 Joseph Aplin to James Stewart, 16 November 1803, Brenton Halliburton Fonds, MG 1, vol. 334, #2, Nova Scotia Archives and Records Management (NSARM), Halifax, Nova Scotia.

14 Petition of John Taylor and others, Negro proprietors, December 1807, RG 5 A, box 14, doc. 49, NSARM.

15 *OPINIONS OF SEVERAL GENTLEMEN OF THE LAW, ON THE SUBJECT OF NEGRO SERVITUDE IN THE PROVINCE OF NOVA-SCOTIA* (St. John, NB: John Ryan, 1802), 7-9.

16 Cahill, “Slavery and the Judges,” 87.

bills were usually dressed up in the garb of either regulating the free black population or slowly ending slavery, but according to Cahill they sought not to “regulate Black persons [but rather] to regularize Black slavery.”¹⁷ Each bill would have protected the property of slaveholders and confirmed ownership of “Negro Slaves.” In Nova Scotia, there were un-passed bills in 1787, 1789, 1801 (an attempt to set up a commission), and 1808, while in New Brunswick the slaveholder and politician Stair Agnew tried unsuccessfully to push through similar legislation in 1801.¹⁸ Each of these bills underlines the struggle of slaveholders to define the status of their slaves.

The failed 1787 bill set a precedent by prompting an explicit denial of the existence of slavery in Nova Scotia. Although it passed through two readings, “*when the Solicitor General (Richard John Uniacke) moved, that the Bill for Regulating Negroes, &c. should be deferred to the next session, [the motion] . . . passed in the Affirmative.*”¹⁹ The reason for the deferral of the bill rested on the phrase “Negro Slaves.” According to Attorney General Sampson Salter Blowers, the insertion of the clause “was rejected by a great Majority on the ground that Slavery did not exist in the province and ought not to be mentioned.”²⁰ There were, of course, plenty of slaves in Nova Scotia, as indicated by wills, runaway advertisements, bills of sale, and other documents. In this instance Attorney General Blowers and Solicitor General Richard John Uniacke meant that they did not want slavery to be mentioned in statute law, which would have made its eventual eradication exceedingly difficult. Nova Scotia was a society where slaves lived and laboured, but where there was no statutory recognition of the institution.

In 1789, proposed legislation “for the Regulation and Relief of the Free Negroes within the Province of Nova Scotia” again attempted to define slavery. The bill outlined punishments for those who would “carry [blacks] out of the Province” and sell them as slaves to the West Indies. Its authors wished to restrict the freedom of movement of allegedly free blacks and also enshrine the concept of slavery. The law would have provided

that from and after the publication hereof all Negroes residing within this province who are not Slaves by Birth or otherwise and who shall be convicted before any three Justices of the County in which such a Negro shall be found of not having a fixed place of abode or a proper means of Subsistence, or of being/an Idle Disorderly person, it shall be lawful for such Justices to bind by indenture said Negro or Negroes, without his or their consent to any

17 Cahill, “Slavery and the Judges,” 87.

18 *Journal and Proceedings of the House of Assembly (JHOA)* (Halifax: King’s Printer, 1787), 17; An Act for the Regulation and Relief of the Free Negroes Within the Province of Nova Scotia, In Council, 2 April 1789, RG 5, Series U, Un-passed Bills, 1762-1792, NSARM; *JHOA* (16 July 1801): 72; and A Bill relating to Negroes, 6 February 1801 and 12/13 February 1801, Legislative Assembly Records, RS 24, S 14-B 9, Provincial Archives of New Brunswick (PANB), Fredericton, New Brunswick; An Act for regulating Negro Servants within and throughout this Province, 1808, RG 5, ser. U, Un-passed Bills, NSARM.

19 *JHOA* (1787): 22.

20 Cited in Cahill, “Slavery and the Judges,” 84-5.

person or persons whatsoever for any term not exceeding seven years, provided that the Master or Mistress of the said Negroes shall not transport nor carry them out of the Province upon pain of incurring the penalty herein after mentioned.²¹

The words “Slaves by Birth or otherwise” would have given owners greater support for their claims to own black people as property. The notion that any black person deemed an “Idle Disorderly person” could be indentured implied slavery by another name. It would have been easy to exploit this labour well beyond the seven-year period by moving – albeit illegally under the proposed legislation – to the United States or West Indies or selling people to those regions. As matters stood in reality, these types of sales occurred frequently.

In 1801, William Chipman attempted to prompt the setting up of a commission of inquiry into the status of slavery in Nova Scotia. Chipman served as MLA for Kings County between 1799 and 1806.²² He noted “Commissioners should be appointed to enquire into the rights which Individuals in the Province have to the service of Negroes and People of Colour, as Slaves; and also, to ascertain the Value of such Slaves, and that a Sum of Money be appropriated to pay such Individuals for their Property in such Slaves.” An amendment to the original proposal, presented in the legislature, envisaged that the commissioners should be “authorized to try such rights in the proper Courts in this Province.”²³ The call for the commission implied admitting that the institution of slavery was on the road to extinction, as owners clearly hoped for some type of compensation if a form of gradual emancipation were to be adopted. Legislators, however, blocked the proposed commission by deferring it to “the next Session,” and it was never revisited. This proposed legislation raises several issues. Chipman’s motivations are not clear. It is possible he wanted to help initiate the gradual end of slavery. By 1801, the Maritimes and New Jersey were the only parts of northeastern North America that had not either abolished slavery or enacted gradual emancipation. There were powerful slaveholders, such as Benjamin Belcher in Kings County, and perhaps Chipman wanted their support for his political career.²⁴ Chipman may also have hoped to gain statute recognition of slavery. Chipman’s motion was not an attempt to end slavery necessarily, but rather a recognition that the rights of slaveholders were under attack from the judiciary and they might lose their slaves without any compensation. The wording in this motion is indicative of the problematic nature of slavery in Nova Scotia in that as late as 1801 – 18 years after Loyalists had brought slaves to the province – there were still questions about the so-called rights of owners, thus underlining the vulnerability of slavery.²⁵

In the wake of a court decision that returned a woman to slavery, but made no judgment about the institution itself, New Brunswick’s Stair Agnew introduced “A Bill relating to Negroes.” This 1801 bill claimed that the 1791 Act of Parliament

21 An Act for the Regulation and Relief of the Free Negroes Within the Province of Nova Scotia, In Council, 2 April 1789, RG 5, Series U, Un-passed Bills, 1762-1792, NSARM.

22 Carman Miller, “Chipman, William Allen,” *Dictionary of Canadian Biography Online*, <http://www.biographi.ca/009004-119.01-e>.

23 *JHOA* (16 July 1801): 72.

24 Will of Benjamin Belcher, March 1801, Will Book, vol. 1, pp. 222-7, NSARM.

25 *JHOA* (16 July 1801): 72.

encouraging settlement in British America had authorized slaveholding in New Brunswick. The bill, in part, stated “all sales, or Bargains for the sale of any Negro, or Negroes . . . [must be] registered in the Registers Office.” It would also have “enacted that all Ownership shall be deemed, and computed from the Female, or mother of such child or children whose state and condition shall Regulate.”²⁶ In a context where miscegenation and forced sexual relations between owners and slaves occurred frequently, this provision would have intensified masters’ sexual access to slave women while also guaranteeing the enslavement of any offspring. Sexual relations between masters and slaves in the Maritime colonies were similar to such encounters throughout North America. As studies elsewhere show, there was a remarkable range of experiences, from violent sexual exploitation to apparently stable and committed relationships.²⁷ Evidence of interracial sexual encounters in the Maritime colonies include the cases of Diana Bastian and *Douglass v. MacNeill*.²⁸

Bastian’s case is a good example of the sexual oppression that female slaves faced daily and that Agnew wanted to give legal sanction. In Cape Breton, Abraham Cuyler’s (the former mayor of Albany and member of the Executive Council) young teenage slave Diana Bastian had a sexual encounter in which naval officer and member of the council George More “deluded and ruined” her. Bastian “most earnestly implored the favor” of a local justice who happened to be More’s brother. She demanded to be “admitted to her oath, concerning her pregnancy by [More].” The judge refused to hear her, and he and More denied Bastian “every other assistance.” Soon thereafter, Bastian died in childbirth. The Bastian example underlines the struggle of masters, slaves, and local society to understand the meaning of slavery and race. Bastian, only a teenager, believed that More owed her “assistance.” At that moment, her vulnerability as a female slave denied her the possibility of obtaining anything from More or his brother as the judge. More being a member of the Executive Council and a naval officer, the elite of Cape Breton were not willing to hold one of their own accountable for his actions. More’s racial identity and class status trumped the fact that he had impregnated a young enslaved teenager. In the end, the Executive Council, local society, and the legal system rebuked her pleas because of her gender, race, and slave status.²⁹

In addition to his provision trying to reinforce the sexual exploitation of black women, Agnew’s bill also attempted to punish local abolitionists who might provide aid to escaped slaves:

26 A Bill relating to Negroes, 6 February 1801 and 12/13 February 1801, Legislative Assembly Records, RS 24, S 14-B 9, PANB.

27 Martha Hodes, ed., *Sex, Love, Race: Crossing Boundaries in North American History* (New York: New York University Press, 1999); Jennifer Morgan, *Laboring Women: Reproduction and Gender in New World Slavery* (Philadelphia: University of Pennsylvania Press, 2004); Annette Gordon-Reed, *The Hemingses of Monticello: An American Family* (New York: W.W. Norton & Company, 2008).

28 Burial of Diana Bastian, 15 September 1792, St. George’s Church Records, Sydney, Cape Breton, MG 4, no. 147, NSARM; *Douglass v. MacNeill*, 1791, Halifax, RG 39 C, vol. 62, no. 62, NSARM.

29 Burial of Diana Bastian, 15 September 1792, St. George’s Church Records, Sydney, Cape Breton, MG 4, no. 147, NSARM.

And be it further enacted that if any person, or persons shall receive, harbour, or conceal any Negro servant, or detain them from the service of their Owner or Master, for the space of – Hours, every person, or persons, so receiving, harbouring, and concealing, or detaining such Negro servant or servants shall incur the possibility of [no amount given] pounds to be levied by [Distress] and Sale of the Offenders Goods and Chattels upon conviction before any of his Majesty's Justices of the peace.

Agnew also wanted to initiate gradual emancipation, noting that “every Negro child that may be born in this province from and after the passing of this Act” would be freed at an undetermined age.³⁰ He quickly withdrew the bill because “the tide of popular opinion in New Brunswick was so strongly set against slavery that Agnew, a member of the numerically dominant opposition faction in the Lower House, could not induce his assembly colleagues to recognize that the province’s slaves were held lawfully.” What is fascinating is that slavery certainly lasted longer and remained more deeply entrenched in New Brunswick than Nova Scotia or Prince Edward Island. Members of the Lower House did not want to give statute recognition to slavery because that would have made it even more difficult to abolish if and when they decided to take such measures. As in Nova Scotia, slavery had remained undefined as late as 1801. The bill was nothing more, Bell has argued, than an “ill-disguised attempt to give direct legislative recognition to the existence of slavery in New Brunswick.”³¹

The last effort at defining and regulating slavery occurred in 1808 in Nova Scotia. This bill resulted from an 1807 petition by Digby slaveholders. The petitioners recapitulated the familiar arguments that certain acts of Parliament recognized slavery. They complained that local judges had failed to protect the property rights of slaveholders. The petitioners asked for clarity, therefore, about the status of their slaves.³² The 1808 “Act for regulating Negro Servants within and throughout this Province” was a defensive bill written to protect slaveholders from the loss of their property by detailing a program of gradual emancipation by age of an individual slave. As Nova Scotia moved toward emancipation, slave-owners realized that they might possibly lose their slaves without any compensation. They had witnessed the judiciary free the slaves of well-known owners such as James DeLancey.³³ Entrenching gradual emancipation in law would have allowed slaveholders to continue to steal the labour of their slaves for many years while giving them time to sell slaves to the West Indies or the United States. In addition to giving slavery a form of legal recognition, the proposed bill held that slaves between the ages of 21 and 30 were to have their freedom after four years of service, while those “within

30 A Bill relating to Negroes, 6 February 1801 and 12/13 February 1801, Legislative Assembly Records, RS 24, S 14-B 9, PANB.

31 Bell, “Judges of Loyalist New Brunswick,” 22, 21.

32 Petition of John Taylor and others, Negro proprietors, December 1807, RG 5 A, box 14, doc. 49, NSARM.

33 *OPINIONS OF SEVERAL GENTLEMEN OF THE LAW*; Joseph Aplin to James Stewart, 16 November 1803, Brenton Halliburton Fonds, MG 1, vol. 334, #2, NSARM.

the respective Ages of 30 and 40 years” would be freed after three years of servitude from the date of the publication of the bill. Black children would have suffered the most. They had to serve until the age of 21. In other words, a one-year-old child would have waited until 1828 for his or her freedom. The bill also attempted to retain control over the actions and words of people of African descent, through various punishments for perceived insolence: “[In] case any such Negro shall behave or demean himself or herself, in a violent or refractory manner, to his or her Master [and/or] Mistress, such Justice, upon complaint thereof, and due proof made of the same, is hereby authorised and required to commit such violent or refractory Negro to [jail].” True to slaveholder paternalism, the bill also promised “a sufficiency of wholesome Food and comfortable clothing.” If this was not provided, or “ill treatment” discovered, local courts could discharge the victims from further service (an unlikely scenario).³⁴ The 1808 bill marked a last-gasp effort by owners to maintain control over their slaves and legally exploit black labour for several more years.

If there were times of extreme confusion regarding the legal status – or lack of it – of slavery, the place of black people, slave or free, remained quite clear. Slaves and free blacks were regularly reminded that they belonged on the lowest level of society, or indeed outside of society altogether.³⁵ The most blatantly harsh form of racial discrimination involved the public whipping of blacks who had been convicted of some offence. Public whippings were administered to free and enslaved blacks alike. Some white convicts were also whipped, but people of African descent suffered these punishments with greater regularity as the records in Nova Scotia demonstrate. The whippings of free blacks reduced them to a status that most whites thought proper for African-descended people.

Whippings occurred throughout the region. In Sydney, Cape Breton, two whippings stand out. In neither case is the exact status of the victim entirely clear. In 1787, the local court convicted Sarah Ringwood of petit larceny for stealing condiments from Elias Cook. The court ordered that she “receive Thirty nine stripes on her naked back at the Public Whipping Post in Manchester.” Nine years later, a “black boy” named Joseph had been “spreading [a] scandalous report [about] Helen

34 An Act for regulating Negro Servants within and throughout this Province, 1808, RG 5, Series U, Un-passed Bills, NSARM.

35 There is a tremendous amount of work about “race” and its development in the Atlantic World and North America. The literature includes, but is not limited to, the following: Mark M. Smith, *How Race is Made: Slavery, Segregation and the Senses* (Chapel Hill: University of North Carolina Press, 2008); Berlin, *Many Thousands Gone*; Melish, *Disowning Slavery*; Colin Kidd, *The Forging of Races: Race and Scripture in the Protestant Atlantic World, 1600-2000* (Cambridge: Cambridge University Press, 2006); David Armitage and Michael J. Braddick, eds., *The British Atlantic World, 1500-1800* (New York: Palgrave, 2002); Christopher Leslie Brown, *Moral Capital: Foundations of British Abolitionism* (Chapel Hill: University of North Carolina Press, 2006); Bruce Dain, *A Hideous Monster of the Mind: American Race Theory in the Early Republic* (Cambridge: Harvard University Press, 2002); Barbara Jeanne Fields, “Slavery, Race and Ideology in the United States of America,” *New Left Review* 181, no. 1 (May/June 1990): 85-118; and Evelyn Brooks Higginbotham, “African-American Women’s History and the Metalanguage of Race,” *Signs* 17, no. 2 (Winter 1992): 251-74.

Key.” The court ordered that Joseph receive “24 Stripes.”³⁶ What is striking is that sometimes slaves would be punished by the judicial system for crimes committed against their owners. In these cases, the state would whip or otherwise punish the slave on behalf of the master – as if the master was not already prepared to administer a similar punishment. In 1784 at Shelburne, the enslaved Isaac committed assault and battery on the body of his master William Young. The court determined that he should be publicly whipped with 39 lashes and sentenced him to two months of hard labour. The jail keeper was ordered to whip Isaac at least once per month.³⁷ One year later, the “property of Robert Sommerville,” a man named Joe, was “convicted on Oath, of stealing Sundry Articles” from his owner. The court sentenced Joe to be stripped and whipped with 39 lashes.³⁸ During the same year, a black woman named Diana was convicted of petit larceny. The court ordered a vicious punishment because this was her second offence: “The Court doth Sentence the Prisoner, to have Two hundred lashes at the Cart’s Tail, next Saturday . . . [and] one Hundred & fifty lashes on the following Saturday . . . for the second offence.” In 1792 Alicia Wiggins, “a Free Negro Labouring woman,” was convicted of petit larceny for stealing money and clothing. The court sentenced her to “Thirty Nine Lashes on her bare back.” The number of lashes usually varied by case, and sometimes the punishment could be carried out over several days. Seven years after the Alicia Wiggins whipping, William Davis was accused of stealing half a bushel of flour from his master and giving it to two “Mullata” women. Davis received 20 lashes at two different times for his actions. Whippings continued into the 1820s. In 1820, Patty Brown stole a gown worth one shilling. The court sentenced this “Girl of Color” to receive “ten Lashes with a Cat and Nine tails, and then to leave the Township Immediately.”³⁹

Black agency and selective white cooperation

Slaves frequently absconded from their owners because they had a decent chance of permanent escape. As there were no slave codes, the enslaved knew they could challenge their bondage in court if they found sympathetic whites who might support their case by filing a writ of habeas corpus or through some other legal maneuver. Fugitives also realized that they could hide among the free black community or flee on one of the many vessels in Halifax, Shelburne, Annapolis Royal or Saint John. But escape also carried serious risks. Runaway slaves realized that local courts could return them to their owners, while free blacks feared court-mandated re-enslavement. By the late 1790s and early 1800s, Nova Scotia judges, such as Blowers, had ruled against slaveholders by making it almost impossible for owners to prove that they owned black people as chattels – though Blowers and others avoided a direct ruling against the entire system of slavery. The judges of

36 Court of the General Sessions, 10 October 1787 and 11 August 1796, County of Sydney, Guysborough, RG 34-311, NSARM. The 39 lashes were based on the number of times Jesus had been struck.

37 Shelburne Records, MG 4, vol. 141, NSARM.

38 15 September 1785, Special Session, Shelburne, RG 50, #8.4, NSARM.

39 Shelburne Records, MG 4, vol. 141, NSARM; *King v. Alicia Wiggins*, 2 April 1792, Shelburne, RG 60, #53.2, NSARM.

New Brunswick were less willing to support slave freedom. Nevertheless, slaves ran away and thus challenged the institution. By the early 19th century, observed Joseph Aplin, “it was universally believed among the Blacks, that whether they enlisted [in the Royal Nova Scotia Regiment], or not, they would all be made free [by] coming to Halifax.”⁴⁰

The large free black population and the presence of anti-slavery whites made successful escape possible. On three different occasions over a 30-year period, slaves absconded from New Brunswick slaveholder Caleb Jones. In March 1786, “a negro man named BEN” left Jones’s service. Jones offered a reward of “Five Dollars” for Ben’s capture, and he subsequently found Ben and returned him to slavery.⁴¹ Several months later, in the summer of 1786, several of Jones’s slaves attempted a mass escape:

RAN AWAY FROM the Subscriber living at Nashwakshis, in the county of York, between the 15th and 21st days of this instant July, the following bound Negro slaves, viz. ISAAC about 30 years old, born on Long Island near New-York, had on when he went away, a short blue coat, round hat and white trowsers. BEN, about 35 years old, had on a Devonshire kersey jacket lined with Scotch plad, corduroy breeches, and round hat. FLORA, a Wench about 27 years old, much pitted with small-pox, she had on a white cotton jacket and petticoat. ALSO, NANCY about 24 years old, who took with her a Negro child about four years old called LIDGE. The four last mentioned Negroes were born in Maryland, and lately brought to this country.⁴²

Three decades later, at the age of 34, Lidge attempted to escape again from Caleb Jones. Despite 30 years of enslavement, Lidge still wanted his freedom. In an advertisement, Jones described Lidge as “under five feet high; broad face and very large lips; brought him from Maryland with my family;-he took with him a large CANOE ... [and] was seen going down the River.”⁴³ During his lifetime, Lidge went from slavery in Maryland to slavery in New Brunswick, followed by a brief period of freedom, re-enslavement for 30 years, and finally – perhaps – freedom.

One of the most informative slave advertisements in Nova Scotia is about a man named Belfast, who “commonly . . . [went] by the name of BILL.” In 1794, the Loyalist Michael Wallace had hired Bill out to William Forsyth. Bill believed that his hiring out gave him a much better opportunity to escape. He attempted to board a vessel headed to Newfoundland, but for reasons that are unclear he did not make it on board. Wallace, describing Bill as about 27 years old with a “mild good countenance” and born in South Carolina, still believed that Bill would try to board other vessels to escape from the province. Bill spoke “good English” and would probably try to “pass

40 Joseph Aplin to James Stewart, 16 November 1803, MG 1, vol. 334, #2, NSARM.

41 *Royal Gazette and New Brunswick Advertiser*, 7 March 1786.

42 *Royal Gazette and New Brunswick Advertiser*, 25 July 1786. It is quite apparent that Nancy and Lidge were recaptured, but it is unclear as to what happened to the rest.

43 *New Brunswick Royal Gazette*, 9 July 1816.

for a free man.” Wallace offered a description of the clothing Bill wore when he absconded, but noted that this – Wallace admitted – intelligent slave “had other cloaths secreted in town, [and] may have changed his whole apparel.”⁴⁴

Owners regularly threatened to punish anyone who attempted to help escaped slaves. They worried that runaway slaves would either board a vessel or, worse still, be sheltered by anti-slavery individuals. There were segments of society in New Brunswick and Nova Scotia that opposed slavery and had little sympathy for the loss of slaveholder property. Owners felt intensely vulnerable and knew they could not count on support from their neighbors. In 1787 a slave named London absconded from his owner Joseph Clarke, and Clarke warned “all masters of vessels and others are hereby forbid to carry him off, or to employ him as a servant or otherwise.”⁴⁵ The employment of runaway black slaves occurred quite often and resulted in several important court cases in the region (discussed below). Slaveholders remained so fearful of anti-slavery neighbors that one placed an advertisement in a local paper, headed “CAUTION.” In it, John Ryan warned “all persons against attempting in [the] future to seduce from his Service his Female Negro Slave DINAH.” It seemed unthinkable to Ryan that Dinah might actually want her own freedom and did not need to be seduced away from “his service.” Ryan added “he is determined to punish by all legal ways and means, every offender of that description.” So that “no one may plead ignorance of the person of the Slave in excuse,” Ryan went on to provide a description of Dinah.⁴⁶ Another master tried a more persuasive approach. Although Abel Michener warned vessels from taking away his escaped slave, he noted that if “the said JAMES, will return to his Master he shall be forgiven.”⁴⁷

The story of John Stewart is an example of local whites helping, if not encouraging, blacks to escape the service of their owners. In 1791, the baker and farmer Richard Jenkins complained to a local court in Shelburne that George Jenkins had absconded from his home in nearby Green Harbour. The *Book of Negroes* described George as the 14-year-old “Property of Richard Jenkins” in 1783.⁴⁸ Richard Jenkins claimed that John Stewart, another farmer in the same township, had attempted to “inveigle and Entice” George to escape. In court, George testified that he had absconded from Jenkins because he feared being blamed for his master’s herring nets being “cast off their moorings” into the harbour. As he attempted to escape, George had run into Stewart, who “gave him some Bread, and Lobsters, and desired him to make the best of his way to Shelburne.” He also reported, “John Stewart hath frequently advised, and persuaded this Deponent, to run away from his said master.” Although George did not get away, Stewart had certainly tried to help George obtain freedom.⁴⁹

44 *Nova Scotia Gazette and Weekly Chronicle*, 15 March 1794.

45 *Royal Gazette and New Brunswick Advertiser*, 17 August 1787.

46 *Royal Gazette and New Brunswick Advertiser*, 24 December 1806.

47 *Nova Scotia Gazette and Weekly Chronicle*, 22 May 1781.

48 *Book of Negroes*, Sir Guy Carleton Papers, Library and Archives Canada (LAC).

49 Shelburne Records, MG 4, vol. 141, NSARM; Summons for Richard Jenkins against John Stuart [or Stewart] on Information + Complaint for Inveigling the Servant of the Said Richard, RG 60, Shelburne County, 48.4, NSARM.

There were pockets of anti-slavery sentiment throughout the Maritimes, and they grew into a more widespread emancipationist current throughout the region by the early 19th century. In 1783, for example, Quakers at Beaver Harbour, New Brunswick, decided to form a settlement where no slaveholders would be allowed to live. Residents of the settlement were also forbidden to participate in the local or international slave trade.⁵⁰ Five years later, in Nova Scotia, the Scottish immigrant Reverend James MacGregor published *A Letter to A Clergyman Urging him to set free a Black Girl he held in Slavery*. This anti-slavery tract was directed at the Reverend Daniel Cock, who had owned and sold female slaves. MacGregor, heavily influenced by the Scottish Enlightenment, saw no excuse for slaveholding and accordingly argued that Cock, who had obtained a slave woman as a gift and had purchased her daughter, was “under the necessity of renouncing every thing amiable, divine or humane, before the curse of Canaan entitle you to enslave your fellow creatures.”⁵¹ Although Cock did not free the enslaved women, MacGregor’s pamphlet had important consequences. Not only does it stand as an important piece of anti-slavery literature in British North America, but also according to Cahill it was “the spark which set the slow fires of antislavery burning.” At the same time, the large number of free blacks presented in itself a challenge to the idea that people with African ancestry ought necessarily to be slaves. MacGregor’s pamphlet was followed by the denial of three of Nova Scotia’s Negro bills and the slow judicial strangling of slavery in the late 18th and early 19th centuries.⁵²

Slaves and the challenge of the courts in Nova Scotia

The courts were battlefields where slaves and owners attempted to confirm or to undermine slavery. Slaves pushed for freedom from owners, while owners strove to prove their right to hold slaves. The work of judges such as Blowers was essential to defining and eventually eliminating slavery. By 1810, as Cahill has observed, “the failure of civil litigation by slaveholders to negate the salutary effects of habeas corpus meant that Black slaves had better access to the courts to secure their liberty than free Blacks had to theirs.”⁵³ In the act of running away slaves took their freedom, and a significant number then initiated legal proceedings with the help of sympathetic whites. If they went to court, they challenged the definition of personal property. In court, some black people gained freedom, while on other occasions they lost and were returned to slavery. The instability of the categories of servant, slave, and free allowed slaves, free blacks, and owners to negotiate the meaning of bondage. Slaves pressed their claims by running away, while free blacks attempted to avoid re-enslavement while lending help to their enslaved friends by testifying in

50 W.A. Spray, *The Blacks in New Brunswick* (Fredericton: Brunswick Press, 1972), 17.

51 Cited in Barry Cahill, “The Antislavery Polemic of Reverend James MacGregor: Canada’s Proto-Abolitionist as ‘Radical Evangelical,’” in *The Contribution of Presbyterianism to the Maritime Provinces of Canada*, ed. Charles H.H. Scobie and G.A. Rawlyk (Montreal and Kingston: McGill-Queen’s University Press, 1997), 139.

52 Barry Cahill, “Mediating a Scottish Enlightenment Ideal: The Presbyterian Dissenter Attack on Slavery in Late Eighteenth-Century Nova Scotia,” in *Myth, Migration and the Making of Memory: Scotia and Nova Scotia, c. 1700-1990*, ed. Marjory Harper and Michael E. Vance (Halifax: Fernwood Publishing, 1999), 190; see also Winks, *Blacks*, 102-5.

53 Cahill, “Hecht,” 182.

court – as in the Mary Postell trial, discussed below. Owners or would-be slave-owners attempted to keep black people in bondage by denying that they had re-enslaved a free black person. Although slaves were seen as property in the eyes of owners, in reality they were agents in the making of their own destinies. They did not quietly accept their condition and simply wait for good-hearted white judges and citizens to free them. They took an active part in the destruction of slavery.

The records of early Nova Scotia are rife with examples of slaves and owners negotiating the contours of bondage. In her excellent work, Carole Watterson Troxler outlines the struggles of black people to fight against oppression and slavery in Country Harbour.⁵⁴ During the American Revolution, Moses Reed and Jameson Davis were the property of Peter Green. They worked on his farm in Bute County, North Carolina. During the Loyalist occupation of Charleston, these men and an elderly slave “ran away from Mr. Green, who was a Rebel.” The older man died, but Davis and Reed both made it to Charleston, where they worked for the British. After the evacuation of Charleston, they accompanied other Southern Loyalists to St. Augustine, before eventually settling in Country Harbour, Nova Scotia, as free labourers for Colonel (or Captain) Hamilton.⁵⁵

Molly Sinclair had been born in Charleston and lived with her master, James Sinclair, for most of her life. During the Revolution, she “was taken, with the other Plantation Negroes” to Charleston. She migrated to St. Augustine before settling in Country Harbour with Colonel Hamilton. Her fellow servant, Phebe Martin, was the slave of Rebel William Martin. During the war, she ran away to Ninety-Six, South Carolina, and gained her freedom. After a short time in St. Augustine, she removed to Nova Scotia and also “lived with [Colonel?] Hamilton.”⁵⁶

Although these Black Loyalists were free subjects of His Majesty, they found that freedom in Loyalist Maritime Canada could be fleeting at best. Moses Reed and Jameson Davis were “two years in the Service of Colonel Hamilton” and “received no wages.” Phebe Martin claimed that she “was never [Hamilton’s] slave, or ever received any Wages from him.” After two years of being re-enslaved, these captive labourers resorted to escaping from their would-be master by traveling to distant Halifax where they hoped to be safe.⁵⁷

At this point Hamilton, along with Captain Daniel McNeil, organized what can only be termed a slave patrol, which attempted to recapture the escaped labourers. The slave catchers found the four runaways, put them in irons, and locked them in

54 Carole Watterson Troxler, “Hidden from History: Black Loyalists at Country Harbour, Nova Scotia,” in *Moving On: Black Loyalists in the Afro-American World*, ed. John W. Pulis (New York: Garland, 1999). This book chapter builds on several other earlier works by Troxler, including Carole Watterson Troxler, “Refuge, Resistance, and Reward: The Southern Loyalists’ Claim on East Florida,” *Journal of Southern History* 55, no. 4 (November 1989): 582-90; Carole Watterson Troxler, “Loyalist Refugees and the British Evacuation of East Florida, 1783-1785,” *Florida Historical Quarterly* 60, no. 1 (July 1981): 1-28; and Carole Watterson Troxler, “The Migration of Carolina and Georgia Loyalists to Nova Scotia and New Brunswick” (PhD diss., University of North Carolina-Chapel Hill, 1974).

55 Shelburne Records, MG 4, vol. 141, NSARM. There were two Hamiltons, one a captain and the other a colonel.

56 Shelburne Records, MG 4, vol. 141, NSARM.

57 Shelburne Records, MG 4, vol. 141, NSARM.

a ship's hold, but not before they beat Jameson Davis with a "Cudgell." Molly Sinclair recalled "she was Chained to Moses Reed when put on the vessell." The re-enslaved men and women were taken to Shelburne, but before they could be shipped away local officials got word of their condition and ordered McNeil to bring them ashore for an inquiry and court investigation. McNeil claimed that he had been told to take the re-enslaved Black Loyalists to Shelburne and give them to a Mr. Dean, who "was to give him a Receipt for them, and, as he understood, was to carry them to the Bahamas." After hearing the testimony of the four men and women along with McNeil's statement, the Shelburne court considered whether the blacks were the rightful property of Hamilton (there was no evidence such as a bill of sale) or should go free. The majority of the court, five in favor of freeing them and two against, decided that "the aforesaid Negros" would be allowed to "go where they pleased."⁵⁸

In 1785 James Singletory "applied to James McEwen Esq [according to Benjamin Marston, McEwen was a justice of the peace], praying he might be discharged from the service" of Samuel Andrews. Andrews had migrated to Shelburne from Saint Augustine and claimed James "as his slave." He produced a pass signed by the commissary of claims of Charleston that Andrews had paid £50 for James, his wife, and child. However, he did not produce a bill of sale. Andrews promised, if given time, to produce a bill of sale proving that the black family belonged to him. A witness for Andrews, John Fanning, claimed that "Negro James" had always been considered the property of Andrews. The court decided that Andrews had to produce "due attested proof" before the court would send the family back to slavery. However, Andrews was allowed "Twelve months" to obtain proof of ownership. James, his wife, and child were required to live with Andrews as servants throughout the 12-month period, while their owner attempted to find – or more likely to forge – a bill of sale. The court warned Andrews (bound by a £50 payment and his witness John Fanning £25), that the family could not be sold, conveyed out of the province, and should be used as "hired servants." If he could not produce proof, James and his family would be discharged. The court returned James to Andrews's service, even though he had successfully challenged his bondage, and Andrews continued to own slaves throughout the 18th century. Nevertheless, the case underlines how one black family challenged its bondage in Loyalist Nova Scotia.⁵⁹

One year later, the Shelburne court returned three black people to their owners. Jesse Gray came to the court "in Consequence of a Negro Wench, Named Molly, Claiming her Liberty." Carole Troxler has established that "Molly" was Mary Postell.⁶⁰ Gray produced two witnesses. The first one, William Mangham (or Mangrum), stated that the signature on Jesse Gray's bill of sale from Samuel Gray was legitimate. He also noted that Samuel Gray owned a "Number of [Negroes]," including Mary Postell. The second witness, John Fanning, claimed that he "believes the Negro Wench, Molly, is the just Property" of Jesse Gray. The court

58 Shelburne Records, MG 4, vol. 141, NSARM.

59 Shelburne Records, MG 4, vol. 141, NSARM; the original copies of some of these court cases are available at LAC. James McEwen is listed as an esquire on the 1787 Shelburne Tax Assessment.

60 Carole Watterson Troxler, "Re-enslavement of Black Loyalists: Mary Postell in South Carolina, East Florida, and Nova Scotia," *Acadiensis* XXXVII, no. 2 (Summer/Fall 2008): 76.

ordered that Postell “be declared” to Jesse Gray. However, the court required that Gray promise not to sell Postell out of Nova Scotia for at least 12 months. During this 12-month period, the court required that Postell appear before it if necessary. Gray acknowledged that he owed the Crown £50, while three other men (Samuel Andrews, William Mangham, and John Fanning) also owed a sum of money. The court dictated that they would forfeit their payment “if the said [Jesse] Gray shall make default in selling the Negro Wench, Molly, or sending her out of this Province, so that she can not be forth coming, if required.”⁶¹

This decision is significant for several reasons. Postell used the court system to challenge Jesse Gray’s claim of ownership, but the court refused to believe her assertions of freedom – simply taking the word of two friends of Jesse Gray because the two of them testified at the trial. The Shelburne court simply saw Postell as a piece of private property – not unlike a horse – that Jesse Gray had a right to hold as a slave. The fact that the court would not allow Jesse Gray to sell Postell out of the province underlines the local society’s lack of understanding of what slavery actually meant. If Postell remained the slave of Jesse Gray, why did he have to wait one year to sell or dispose of her as he wished? Perhaps the court thought more evidence might come to light, or it did not want local slaves to be sold to the Caribbean; it is difficult to know with certainty why Gray was made to “give Security” for not carrying her out of the province.⁶²

The other 1786 case involved men named Pero and Tom. Joseph Robins claimed that he had purchased both men for £29 sterling. Patrick Licet said he had observed Joseph Robins purchase Pero for a horse and eight guineas. The second witness claimed he had hired Pero from Robins and “always understood the said Negro to be the Property of Joseph Robins.” This same witness, James Stone, claimed that he had heard Pero admit to being the slave of Robins. During his examination, Pero stated that he had gone to St. Augustine with James Stone, instead of returning to his rebel master. But he denied being the property of Stone. Tom, for his part, commented that he had belonged to Philip Caine in “Carolina” and had run away to Charleston, where he worked in the wood yard. Tom accompanied Joseph Robins to St. Augustine. He recalled being sold for a horse, but firmly denied being owned by Robins. The court ordered Joseph Robins to “take Possession” of Tom and Pero, but required that he not sell them out of the province for 12 months. The continued enslavement or re-enslavement of blacks is instructive for several reasons. Tom and Pero both realized that they could assert their freedom in court. Although they lost, they either told the truth or were smart enough to construct a narrative that aligned with the history of most free blacks in the region – that is, running away from a rebel owner and performing loyal services to His Majesty before migrating to St. Augustine and finally Nova Scotia. These slaves realized that the legalities of slavery and freedom were shifting and unclear. They attempted to use the confusion to gain their freedom.⁶³

In November 1791 two young black boys faced re-enslavement by their alleged owners, whom they regarded as having no right to their service as slaves. In the first

61 Shelburne Records, MG 4, vol. 141, NSARM.

62 Shelburne Records, MG 4, vol. 141, NSARM.

63 Shelburne Records, MG 4, vol. 141, NSARM.

case, a black woman named Susannah Connor “came here personally into Court” and complained that John Harris intended to take her son out of the province. Her son (Robert Gemmel or Gammel) worked as Harris’s indentured apprentice. The court ordered Harris to come in immediately and answer for his alleged plans. Harris readily admitted that he planned to leave the province, but claimed that the only reason he planned to take the boy was because there were no other available owners to teach Gemmel the art of butchery. The court canceled the indenture. If Susannah Connor had not intervened on behalf of her son, Gemmel would have been taken out of the province – to the United States or elsewhere – and no doubt enslaved. In the other case, a sympathetic local citizen told the court that Timothy Mahan “detains, a Negro Boy, who he hath attempted to sell, and Dispose of, without having property therein.” The court ordered Mahan to appear before it along with the five-year-old John Simmons. Mahan claimed that Simmons’s parents had given him the boy three years earlier. The court found that Mahan had treated the child “kindly, and humanely,” but ruled that Simmons’s parents had no right to give him away and Mahan had no “property in the said Boy.” What is unclear is whether Mahan originally stole the child from his parents, as saying they gave the child to him was certainly a convenient answer. Nevertheless, the boy escaped sale to another owner. The cases of Robert Gemmel and John Simmons underline the tenuous nature of the line between slavery and freedom that black people faced in the Maritimes, even – perhaps especially – if they were small children.⁶⁴

The most famous or infamous case of re-enslavement is that of Mary Postell and her children. Unlike most aspects of the history of Maritime slavery, this particular incident has received sustained attention. Sylvia Hamilton memorialized Postell in a poem entitled “Potato Lady,” while Troxler has written a noteworthy article about her sad life.⁶⁵ The case is rare in that there is clear documentation that demonstrates re-enslavement and cruelty, but it also illustrates the ways in which black people attempted to negotiate their way out of bondage. The story highlights the evil treatment of a mother and her brutally imposed separation from her children.

In 1791, Mary Postell went to the court and “Complained against Jesse Gray, of Argyle, for taking away her children.”⁶⁶ The indictment against Jesse Gray included the details of his re-enslavement and treatment of Mary Postell and her children by indicating that in 1785 Jesse Gray had violated the King’s peace by enslaving Mary Postell and her two children, Flora and Nelly (also Nell), in St. Augustine and Shelburne. Gray, the indictment continued, through a combination of “grievous threatenings and other enormous abuses [did] compell terrify and oblige [the three] to serve, Work, and Labour” for his profit. Gray forced Mary Postell and her children into “the Hold of the said Ship or Vessel called the *Spring* Transport upon the High Seas for a long space of Time,” and after 25 days they landed at Shelburne. For the next two years, Gray forced Mary Postell and her children to “Work and Labour . . . as the Slave and Slaves of him.” The court papers also importantly noted that Gray had set an “Evil Example of all others offending in the like kind.” After

64 Shelburne Records, MG 4, vol. 141, NSARM.

65 Sylvia D. Hamilton, “Potato Lady,” in *Fire on the Water: An Anthology of Black Nova Scotian Writing*, vol. 2, ed. George Elliott Clarke (Lawrencetown, NS: Pottersfield Press 1992); Troxler, “Mary Postell,” 70-85.

66 Shelburne Records, MG 4, vol. 141, NSARM.

exploiting Postell and her children, Gray decided to sell her to William Mangham for “One Hundred Bushels of Potatoes.” In 1790, Gray sold Flora Postell to John Henderson for £5. Henderson then took the child, around 9 or 10 years old, to North Carolina.⁶⁷

The case hinged on the testimony given by Mary Postell, Jesse Gray, and others. Mary Postell told the court that she had been born in South Carolina and was the “property of a certain Elijah Postell.” After Elijah Postell’s death, she became the slave of his son, who served in the Continental Army during the war. She “joined” His Majesty’s forces near Charleston and evacuated to Saint Augustine and eventually reached Shelburne with Jesse Gray, who promised to “use her well.” Postell said that Gray sold her to William Mangham and also sold her oldest child to John Henderson, who took her out of the province. Postell stated that Gray “has no right whatever to her or her Children and that she is afraid that said Jesse Gray or William Mangham will seize her and Child and carry them away.”⁶⁸ In support of Postell, Scipio and Dinah Wearing testified that Mr. Postell had owned Mary. Dinah claimed that Postell had run away from her owner and came into British lines. Scipio stated that Postell had been employed in public works for the British. Significantly, Dinah further pointed out that she had never known anyone else to own Mary Postell aside from the Postell family.⁶⁹

In his defense, Jesse Gray claimed that he had originally purchased Mary and her child Flora from Joseph Rea (or Wray) of Virginia in Saint Augustine in 1783. Gray claimed that he then sold Mary and Flora to his brother Samuel Gray. Allegedly, Mary and Flora lived with Samuel for about two years during which time Mary gave birth to her younger daughter Nell. At this point, Gray purchased Mary and her children from his brother and migrated to Shelburne. Gray also stated that he sold Mary to William Mangham and her daughter Flora to John Henderson. But he kept Nell at his house.⁷⁰ Gray obtained the support of a few witnesses. Not surprisingly, William Mangham stated that he had purchased Mary in 1787 for the hundred bushels of potatoes. He also mentioned knowing that Jesse Gray had a bill of sale from Samuel Gray. Gray also called Margaret Harris, who lived in East Florida. She claimed that Mary Postell wanted Harris’s husband to purchase Mary and her daughter Flora.

The court decided that the defendant was not guilty. Gray had been originally charged with a misdemeanor, that he was not the owner of Mary Postell and her children. Simply stated, Postell did not prove that she had been a free person.⁷¹ In the late 1820s, Gray admitted in a letter that he had “embarked” his property in the “West India Trade.”⁷² The decision to return Mary Postell to slavery underlined the presumption that a black person was a slave unless proven otherwise. That Postell

67 *R v. Gray*, April to November 1791, Shelburne County Court of General Sessions of the Peace, RG 60, vol. 1, # 49.4, NSARM.

68 *R v. Gray*, April to November 1791, Shelburne County Court of General Sessions of the Peace, RG 60, vol. 1, # 49.4, NSARM.

69 Shelburne Records, MG 4, vol. 141, NSARM.

70 Shelburne Records, MG 4, vol. 141, NSARM.

71 Shelburne Records, MG 4, vol. 141, NSARM.

72 Cited in Troxler, “Postell,” 77.

was re-enslaved, however, should not obscure for historians the fact that she pressed her claim as far as possible. In the years after the Postell decision, Nova Scotia judges would reverse the course set by the Postell case. Instead of forcing alleged slaves to prove they were free, slave-owners had to prove that they had the legal right to hold slaves – which, for many, turned out to be difficult or impossible. After the Mary Postell case, black people continued to appear in the local courts, but in much lesser numbers than during the 1780s and early 1790s. The reason for this is two-fold. First, some people of African descent left for Sierra Leone or migrated away from the Shelburne/Birchtown area. Second, by the mid-1790s Shelburne had been practically deserted and some of the out-migrants were slaveholders.

By the late 1790s and early 1800s, Blowers (and before him Thomas Strange) slowly ended slavery. They both assiduously avoided a direct ruling against slavery generally, instead opting to make it exceedingly difficult for individual owners to prove they could legally own slaves. In an 1800 brief regarding a slave case in New Brunswick, Solicitor-General Ward Chipman explained how this process worked in Nova Scotia. He highlighted the ways in which Nova Scotia had gradually made slavery seem untenable, at least from the point of view of some owners, and his explanation for Nova Scotia's slow but sure legal action against slavery was based mainly on his correspondence with Blowers. Chipman observed:

That the general question respecting the slavery of Negroes has been often agitated there in different ways, but has never received a direct decision; that although the Court there has avoided an adjudication of the principal point, yet as they required the fullest proof of the master's claim in point of fact, it has been generally found very easy to succeed in favor of the Negro, by taking some exception collateral to the general question, and, therefore, that course has been taken.⁷³

Chipman also recounted the case of a black woman who had been placed in jail and brought to the court on a writ of habeas corpus and freed. The owner protested and Blowers baited the master by encouraging him to “try the right.” The master brought an action against “a person who had received and hired the wench.” Although the slaveholder produced a bill of sale that demonstrated purchase in New York, the master could not “prove that the seller had a legal right to dispose of her.” Blowers directed the jury to find for the defendant and they did so.⁷⁴ In other cases, slave-owners tested their right to hold blacks by filing actions against local whites who had willingly sheltered and/or employed runaway slaves.

DeLancey v. Woodin is perhaps the most celebrated slave case in Nova Scotia history. James DeLancey was one of the more hardened slaveholders in Nova Scotia. According to Joseph Aplin, who was the junior counsel for DeLancey, “Jack, who was legally the slave of Col. DeLancey at New York, accompanied his master to London on the Evacuation of the former Place. From London [he went with] his Master to this Province.” In 1800, after years of enslavement, Jack absconded from

73 Jack, “Loyalists and Slavery in New Brunswick,” 181.

74 Cahill, “Hecht,” 179-209; *Hecht v. Moody*, 1799, RG 39 C, Halifax, vol. 81, NSARM.

his owner and went to Halifax. It seems that Jack hoped to enlist in the Royal Nova Scotia Regiment or believed that he would become free simply by escaping to Halifax.⁷⁵ After DeLancey found out that William Woodin had employed Jack, he had his lawyer Thomas Ritchie demand that the slave be returned. Woodin's lawyer, Richard John Uniacke, refused, arguing that there was no statute law related to slavery and so all blacks in the province were free. At this point, "an action of trover was commenced by Mr. DeLancey against Mr. [Woodin] for the Negro Slave."⁷⁶ DeLancey won the case in the Annapolis annual circuit court, but the judgment was arrested. As it turned out, a new trial set for September 1803 did not occur and DeLancey did not "obtain execution of his judgment against Woodin."⁷⁷ DeLancey died in May 1804. Although no judgment had been entered regarding DeLancey, many slaveholders took his failure to recover Jack as a sign that the courts would not uphold slaveholding in the province. The important aspect of this case lies in the role that Jack played in freeing himself. By running away, Jack took his own freedom. Of course, the legal system could have returned him to slavery – thanks to the work of Uniacke and others it did not – but Jack took the original risk of running away and forcing the issue to court. The case of *DeLancey v. Woodin* could not have happened if Jack had not run away and attempted to enlist. The slow ending of slavery in Nova Scotia occurred because of a triple-pronged attack on the institution by runaway slaves, diligent anti-slavery lawyers and judges, and sympathetic whites such as William Woodin.⁷⁸

Slaves and the courts in Prince Edward Island and New Brunswick

Slaves faced different circumstances in Prince Edward Island and New Brunswick as opposed to Nova Scotia. In PEI, the "Act, *declaring that* Baptism *of* SLAVES *shall not exempt them from* BONDAGE" gave slavery a legal foundation that was absent in the other provinces. This made it difficult for slaves to challenge their status in the courts. In 1802, Sam ran away from his owner Thomas Wright and ended up in front of the Supreme Court on a writ of habeas corpus. Sam attempted to test the lawfulness of slave ownership. His owner produced a bill of sale and the court ruled that the "said Negro return to the service of his said Master whose Title to him appears perfect and complete."⁷⁹ In 1825, by which time there were probably

75 *OPINIONS OF SEVERAL GENTLEMEN OF THE LAW*; Joseph Aplin to James Stewart, 16 November 1803, Brenton Halliburton Fonds, MG 1, vol. 334, #2, NSARM.

76 *OPINIONS OF SEVERAL GENTLEMEN OF THE LAW*, 5.

77 Cahill, "Slavery and the Judges," 98-104.

78 There was another slave case involving Frederick Williams, who had also been a slaveholder in New York and continued as such in Nova Scotia. His slave had run away and been sheltered in a situation similar to that in the DeLancey case. Unfortunately, the decision in this case is not known. However, we do know that Frederick Williams owned slaves as late as 1807 as he was one of the Digby petitioners. Cahill argues that Williams probably would "have been nonsuited." See *Williams versus Stayner and Allen*, 1805, RG 39, box 90, NSARM. In Shelburne, in 1806, there was another similar case where a slave ran away from his master. The master captured his runaway, but he and the slave were brought before the Supreme Court on a writ of habeas corpus. The judge ruled that the province did not have slavery.

79 Supreme Court, Prince Edward Island, RG 6.1, ser. 1, sub-series 1, vol. 10, p. 49, PAROPEI.

no slaves, Prince Edward Island passed “AN ACT to repeal an Act made and passed in the twenty-first year of his late Majesty’s reign,” thus removing any statutory basis for slavery for all time.⁸⁰

In New Brunswick, meanwhile, there were numerous court cases related to slavery. Before 1799, these cases were not necessarily about the right to own slaves, but rather concerned issues of not paying for a slave or selling someone else’s slave. Questions about the actual status or legality of slavery were ignored or avoided because holding slaves remained unquestioned despite the lack of slave codes. The assumption was that private property rights, acts of Parliament, and the Bible sanctioned slavery. A few examples are instructive. In 1786, a slave named London escaped from Joseph Clarke. Miles Urion (or Union) sheltered London, refused to return him to Clarke, and then took him to Digby, Nova Scotia.⁸¹ Clarke’s legal action against Urion was trover and conversion, which meant that Clarke wanted to recover the value of London, whom Urion had allegedly converted to his own use. He successfully recovered London, who again ran away in 1787.⁸² In 1798 George Dixon purchased a slave named Joe, who had been in trouble with the local authorities but had received a pardon from the governor. Joe escaped from Dixon and was “harboured” by one Abraham Gunter, who took Joe to Nova Scotia. Dixon sued Gunter for £35. Supreme Court Justice Joshua Upham ordered “that the said Abraham Gunter be held to Bail in the Sum of Thirty Five Pounds current money of this Province.” The court accepted the enslavement of Joe. The issue for Upham was not whether Joe was a slave, but whether Gunter had stolen the property of Dixon.⁸³ After 1799, there were four significant cases about slavery: *R v. Jones* and *R v. Agnew*, 1799-1800, *Richard Hopefield v. Stair Agnew*, 1805, and *Joseph Clarke v. Samuel Denny Street*, 1806. These cases are important not only for their legal ramifications, but also for the insights they yield regarding owner/slave relations, slave life, and slave families.⁸⁴

In 1800, the issue of the status of a slave woman was brought before the court in the cases *R. v. Jones* and *R v. Agnew*. The first case involved a woman named “Ann otherwise called Nancy,” whom Jones had brought from Maryland in 1785. The second case involved one of Stair Agnew’s female slaves. Both cases began at the same time, but once a decision was rendered in *R. v. Jones* the other case did not

80 AN ACT to repeal an Act made and passed in the twenty-first year of his late Majesty’s reign intituled “An Act, declaring that Baptism of SLAVES shall not exempt them from BONDAGE,” Statutes of Prince Edward Island, 1825 (2nd Session), c. 7; Whitfield and Cahill, “Slave Life and Slave Law,” 29-51.

81 *Joseph Clarke v. Miles Urion*, 1786, RS 42, Supreme Court Original Jurisdiction Records, PANB; for more context on Saint John, see D.G. Bell, *Early Loyalist Saint John: The Origin of New Brunswick Politics, 1783-1786* (Fredericton: New Ireland Press, 1983).

82 *Royal Gazette and New Brunswick Advertiser*, 31 July 1787.

83 *G. Dixon v. A. Gunter*, 1798, RS 42, Supreme Court Original Jurisdiction Records, PANB.

84 The cases include *Ebenezer Brown v. Prince and Patrick*, 1788; *Joseph Clarke v. Miles Urion*, 1786; *G. Dixon v. A. Gunther*, 1798; *Peter Hall v. George Bennison*, 1792; *King v. George Clopper*, 1792; *Thomas Mallard v. James McKown*, 1788; *Thomas Mullen v. Phineas Lovitt*, 1785; *Charles Richards v. Anthony Terrill*, 1785; and *Isaac York v. William Bailey*, 1801 – all found in RS 42, Supreme Court Original Jurisdiction Records, PANB. See also Susan Kathleen Leyden, *Crimes & Controversies: Law and Society in Loyalist Saint John* (Saint John: The Saint John Law Society, 1987), 57-64.

proceed.⁸⁵ The slave woman in *R. v. Jones* probably attempted to escape from Jones in 1786 and he described her as “about 24 years old, who took with her a Negro child about four years old called LIDGE.”⁸⁶ In the summer of 1799, a writ of habeas corpus was “brought by a Negro woman claimed as a Slave by Captain Jones of Fredericton, in order to procure her liberation.” During the trial, the “question of Slavery upon general principles was discussed at great length.” After hearing the testimony, the court remained divided, with judges Ludlow and Upham “being of the opinion that by the existing Law of this Province, Negroes may be held as Slaves here.” Judges Allen and Saunders came to the conclusion that “the Law upon that subject is the same here as in England and therefore that Slavery is not recognized by the Laws of this Province.”⁸⁷ Caleb Jones obtained Ann/Nancy because the divided court did not enter a judgment.⁸⁸ The 1800 non-decision is noteworthy because all of the judges either owned slaves in New Brunswick or had possessed them in what was now the United States.

In 1805, anti-slavery attorney Samuel Denny Street went before the New Brunswick Supreme Court and filed for a writ of habeas corpus for Richard Hopefield, Jr., who had allegedly been detained by Stair Agnew “for the space of Three years and fifty five Days.” The case focused on Patience (also known as Stacey or Statia), who had been brought to New Brunswick as a slave and who had eventually married Richard Hopefield Sr. and had several children (including the younger Hopefield whom Agnew claimed to own). During the case, Hopefield Sr. gave a deposition that outlined his personal life history. Born in Virginia, Hopefield served his owner during the Revolutionary War before escaping to the British. Shortly thereafter he married Patience and had several children, including Richard Hopefield Jr. (who was born in New Brunswick). Hopefield claimed that his wife “had been put on board a vessel by one Phineas Lovitt [a member of the House of Assembly] in order as the deponent was informed to send her to the West Indies to be sold – when she was relanded by order of Governor Carleton who set her at liberty.” It seems that Patience and Hopefield lived together for several years as free people before Joseph Clarke “forcibly seized” her.⁸⁹ In 1792, Joseph Clarke placed an advertisement in local paper complaining about the loss of a female slave named “STATIA” and her five-year-old son and 15-month-old daughter. Clarke also noted that she had run away with an indentured servant named Dick Hopewell (probably Richard Hopefield), who claimed to be married to Statia. It seems probable that Statia was actually Patience.⁹⁰ Clarke recovered his property and sold her to Joseph Hewlett.

Stair Agnew denied the charges against him concerning the detainment of Richard Hopefield, Jr. and benefited from the advice and legal representation of

85 Bell, “Judges of Loyalist New Brunswick,” 20; W.A. Spray, “Jones, Caleb,” *Dictionary of Canadian Biography*, <http://biographi.ca/009004-119.01-e>.

86 *Royal Gazette and New Brunswick Advertiser*, 25 July 1786.

87 *Royal Gazette and New Brunswick Advertiser*, 18 February 1800.

88 Bell, “Judges of Loyalist New Brunswick,” 21.

89 *Richard Hopefield v. Stair Agnew*, 1802/1805, RS 42, Supreme Court Original Jurisdiction Records, PANB.

90 *Saint John Gazette and The Weekly Advertiser*, 29 June 1792.

Ward Chipman, who admitted that his client had beaten Hopefield Jr. but claimed it resulted from “disobedient and refractory and insolent” behaviour and neglect of “duty.” Agnew did not dispute that he prevented “Richard from absenting himself.” Agnew, however, justified his actions because Richard was “a Negro Servant, the property of the said Stair . . . bound to serve the said Stair for his the said Richard’s life time.” Agnew’s claims were damaged by the testimony of other witnesses. Four years earlier, in 1801, the York County Court of General Sessions had indicted him for “Cruel Treatment” of “two Negro Boys” in his service. At that court, Agnew “publickly pledged” that “he would manumitt and make free a certain Negro Boy named or called Richard Hopefield” when he turned 21 years old.⁹¹

Samuel Denny Street argued that since Hopefield Sr. was a free man, his son ought to be free as well. The defense “countered by attempting to show that Hopefield’s parents had never been formally married, so that he had taken the status of his mother rather than of his [free] father.” After this court battle, Hopefield’s writ of habeas corpus failed. Also, a civil suit against Agnew for battery and false imprisonment did not proceed past an early stage. In sum, Hopefield’s case for freedom had failed. As Bell notes, “*Hopefield’s* case was undoubtedly a legal triumph for the slave-owning interests. They had received a clear legal verdict in favour of the continuance of Negro slavery.”⁹²

Bell, the best historian on this topic, suggests that the judges were protesting against the intellectual currents of the time as illustrated by Nova Scotia’s judicial elimination of slavery, the growing agitation against the slave trade, and the adoption of gradual or immediate emancipation in nearly every northern state. They believed that society should be authoritarian and ruled by a class of gentleman connected to the Crown. From this perspective, ending slavery was a sign not of progressive social policy, but rather another step toward a state of anarchy where people did not accept their God-given places in society. “In a society like that of New Brunswick,” Bell notes, “in which the position of the great was precarious, it may have been with considerable gratification that three of the judges ensured, as a matter of law, that the province’s Negroes would continue to be very low indeed.”⁹³

In 1806, Joseph Clarke brought an action of trover against anti-slavery attorney Samuel Denny Street “for a *Negro Boy* claimed by the Plaintiff as his *Slave*.” One of Clarke’s slaves had run away and found shelter with Street, who refused to give the slave back to his owner. At the trial, the plaintiff provided a bill of sale from Gabriel Fowler, who had brought the boy’s mother to New Brunswick after the Revolutionary War. The boy had been born in New Brunswick and his father was free. Denny’s attorney moved for a non-suit on four grounds. First, there was not enough evidence to establish that the mother of the boy was actually a slave. Second, the father was born free and the son’s condition should follow that of the father and not the mother. Third, “there was no Law of this Province creative of Slavery.” Lastly, the action of trover did not apply because no person could claim property in

91 *Richard Hopefield v. Stair Agnew*, 1802/1805, RS 42, Supreme Court Original Jurisdiction Records, PANB; Bell, “Judges of Loyalist New Brunswick,” 24-5.

92 Bell, “Judges of Loyalist New Brunswick,” 24, 25.

93 Bell, “Judges of Loyalist New Brunswick,” 31.

a slave. The newspaper account of the trial noted that “the general question of Slavery was not agitated.”⁹⁴ The chief justice believed that legal title to the mother had been established, but directed the non-suit based on the third and fourth arguments of Street’s lawyer.

The end of slavery

The slow death of slavery extended over two decades. Governor John Wentworth of Nova Scotia claimed, in 1796, “slavery [is] almost exterminated here.” However, historian and archivist Charles Bruce Fergusson rightly noted that Wentworth’s assessment was overly optimistic: the statement, for Fergusson, “was perhaps an indication of the views of the judiciary of that day, and was certainly an anticipation of the situation a few years later. But several sales of slaves took place in Nova Scotia even as late as the first decade of the 19th century.”⁹⁵ It seems that slaves were manumitted by owners, who allowed their slaves to become indentured servants or simply freed them when they turned a certain age. In his anti-slavery brief, Ward Chipman noted that in New Brunswick “slaves have in many instances controverted this right [of ownership], and have been manumitted, or indented themselves voluntarily to serve for a term of years upon condition of being discharged at the expiration of it.” He also pointed out that in Nova Scotia, slave-owners had become so discouraged by court decisions against slaveholder tenure that “a limited service by indenture has been very generally substituted by mutual consent.”⁹⁶ There are examples of this in Nova Scotia probate records. In 1805, a young slave girl was 11 years old. Her master, Jacob Troop, determined that she should be free at age 30, meaning she would have been a slave until 1824.⁹⁷ In his will, another slaveholder left detailed instructions for the manumission of his “Black Boys.” Isaac Bonnell decided that Bob (age 9), Tom (age 11), and George (age 13) would be “Sett at Liberty” when they arrived at the age of 24.⁹⁸ Slavery disappeared as manumissions and limited terms of service replaced black bondage.

Although it is highly likely that slavery had died out by the mid-1820s, we cannot be sure when the last slave gained freedom. Caleb Jones, not surprisingly, published one of the last slave advertisements in 1816.⁹⁹ Six years later, the government of New Brunswick claimed that there were no slaves in the province. There were probably no slaves in Nova Scotia after 1820, but this cannot be known with certainty. If Jacob Troop’s slave did not achieve freedom until age 30, then at least one person would have been enslaved as late as 1824. There might have been some slaves in New Brunswick at the time of the imperial emancipation in the 1830s but, as Bell has argued, “none are known. The situation was probably similar in Nova Scotia and Lower Canada, notwithstanding judicial policy to the contrary.”¹⁰⁰

94 *Royal Gazette and New Brunswick Advertiser*, 10 September 1806.

95 C.B. Fergusson, *A Documentary Study of the Negroes in Nova Scotia between the War of 1812 and the Winning of Responsible Government* (Halifax: Public Archives of Nova Scotia, 1948), 4-5.

96 Jack, “Loyalists and Slavery in New Brunswick,” 180-1.

97 Jacob Troop, 1805, Annapolis County, RG 48, Probate Records, NSARM.

98 Isaac Bonnell, 1806, Annapolis County, RG 48, Probate Records, NSARM.

99 *New Brunswick Royal Gazette*, 9 July 1816; *New Brunswick Courier*, 5 September 1818.

100 Bell, “Judges of Loyalist New Brunswick,” 25.

Why did the Maritimes slowly opt for the ending of slavery? There are several answers to this question. The destruction of slavery did not mean equal or even better treatment for people of African descent. Black people's labour could still be exploited through a system of gross inequities and racial discrimination without the stain of slavery on the region. The supporters of slavery also became an ever smaller and isolated group. The likes of Stair Agnew, Joseph Clarke, James DeLancey, Jesse Gray, and Caleb Jones simply did not represent the majority of opinion in the region, especially by the early 19th century. Others inclined to own slaves could leave the region for places friendlier to slavery, such as the West Indies or the United States. The end of slavery occurred alongside of a growing racism that was associated with the arrival of 2,000 free blacks in the region during and after the War of 1812. The outcome of this growing racism was that these black migrants were placed on the worst land, forced into menial employment, and isolated on the margins of society. In 1815, Nova Scotia's House of Assembly attempted to block further black immigration, stating that people of African descent were "unfitted by nature to this climate, or an association with the rest of His Majesty's colonists."¹⁰¹ Approximately 20 years later, the Nova Scotia Assembly again tried to block a feared influx of liberated blacks from the Caribbean by passing "An Act to prevent the Clandestine Landing of Liberated Slaves."¹⁰² At the same time, the abolition of slavery allowed the region to separate and distinguish itself, especially during the 1830s and 1840s, from the United States. Finally, the abolition of slavery assuaged guilty feelings and allowed some of the more learned members of local society to deny any history of slavery in Nova Scotia. Beamish Murdoch, a highly respected member of the community and learned jurist, claimed that slavery had never been legal in Nova Scotia, nor had it ever existed!¹⁰³

Black people played a significant role in the struggle against and eventual ending of slavery in the Maritime colonies. Yet despite the efforts of historians, slavery's role in Canadian history has been obscured by the feel-good story of the Black Loyalists. Indeed, we have a Canadian Heritage Minute devoted to the Underground Railroad and displays in museums and historical societies illustrating simplistically the attainment of freedom by black people. The actual struggle over slavery in Canada has yet to attain its rightful place in the national narrative. The present article, building on the work of other historians, takes a small step in this needed direction.

American historian Ira Berlin famously wrote, "if slavery made *race*, its larger purpose was to make *class*, and the fact that the two were made simultaneously by the same process has mystified both."¹⁰⁴ In the Maritimes the struggle over slavery resulted in the creation and further development of an insidious racism, which attempted to marginalize and isolate people of African descent on poor lands and deny any opportunity for social mobility. Although most whites eventually opposed slavery in the Maritimes, they also rejected anything resembling equality with their black neighbors. Free blacks symbolized social disorder, economic chaos, and a lack

101 House of Assembly, 1 April 1815, RG 1, vol. 305, doc. 3, NSARM.

102 *Statutes of Nova Scotia*, 1834, c. 68, NSARM.

103 Cahill, "Slavery and the Judges," 124.

104 Berlin, *Many Thousands Gone*, 5 (emphasis in original).

of civilization. In order to control this menacing threat, the region's leaders and the majority of the white population opted for a system of racial subordination and absolute economic control. In 1842, Halifax's *Morning Post* stated: "The abolition of Slavery has been a vast injury to British North America, not to speak of the deterioration of property in the Islands which were victims to emancipation; or the demoralized condition of those, who, in receiving the boon of liberty, have used it in justification of insolence and inactivity. The free negro population of this province, pressing, for the most part, like a dead weight on the community, might have given England an argument that it would have been impossible to repel – of the national slothfulness of the African disposition."¹⁰⁵ Despite this type of racial thinking, black people in the Maritimes created self-sustaining and dynamic communities based on mutual support and shared experience as seen in the creation of the African Baptist and African Methodist churches. Additionally, people of African descent developed mutual aid societies and political organizations such as the African Friendly Society and the African Abolition Society. So while new and more virulent racism emerged out of the ashes of slavery, black people developed various organizations that sought to nurture their communities even as they were systematically isolated from the mainstream of the Maritime colonies.

105 *Morning Post*, 8 November 1842.