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Article abstract

Prince Edward Island (colonial Saint John's Island) is unique among slaveholding jurisdictions in what is now Canada both for having enacted in 1781 an embryonic slave code and for doing so before the unanticipated post-war migration of American Loyalists that was responsible for most of the slaves brought there. This is an anomaly that begs for explanation. Placing it in the context of the Loyalist experience of slaves and slaveholders in Atlantic Canada, this article examines the Prince Edward Island case from the perspective of law and slavery in 18th-century Scotland and the Scottish regime on Prince Edward Island.

Slave Life and Slave Law in Colonial Prince Edward Island, 1769-1825

HARVEY AMANI WHITFIELD and BARRY CAHILL

L'Île-du-Prince-Édouard (la colonie de l'île Saint-Jean) est un cas unique parmi les territoires ayant permis l'esclavage dans ce qui constitue maintenant le Canada, à la fois pour avoir voté un code esclavagiste embryonnaire en 1781 et pour l'avoir fait avant la migration imprévue de Loyalistes après la guerre de l'Indépendance américaine, qui fut à l'origine de la venue de la plupart des esclaves qui y furent amenés. C'est là une anomalie qui exige une explication. Cet article examine le cas de l'Île-du-Prince-Édouard en le situant dans le contexte de l'expérience loyaliste en matière d'esclavage au Canada atlantique, dans la perspective du droit et de l'esclavagisme dans l'Écosse du 18e siècle et du régime écossais à l'Île-du-Prince-Édouard.

Prince Edward Island (colonial Saint John's Island) is unique among slaveholding jurisdictions in what is now Canada both for having enacted in 1781 an embryonic slave code and for doing so before the unanticipated post-war migration of American Loyalists that was responsible for most of the slaves brought there. This is an anomaly that begs for explanation. Placing it in the context of the Loyalist experience of slaves and slaveholders in Atlantic Canada, this article examines the Prince Edward Island case from the perspective of law and slavery in 18th-century Scotland and the Scottish regime on Prince Edward Island.

IN 1781 THE LEGISLATURE OF SAINT JOHN'S ISLAND (Prince Edward Island) passed "An Act, *declaring that* Baptism *of* SLAVES *shall not exempt them from* BONDAGE" (emphasis in original). It stated that people of African descent "who now are on this Island, or may hereafter be imported or brought therein (being Slaves) shall continue such, unless freed by his, her, or their respective owners."[1] Ten years later, in an attempt to encourage settlement, the local newspaper printed an act of Parliament that promised the value of "forty shillings for every Negro brought by such white person."[2] The 1781 act remained on the statute book as a dead letter until

1 "An Act, *declaring that* Baptism *of* SLAVES *shall not exempt them from* BONDAGE", Statutes of Prince Edward Island, 1781, c. 15, Public Archives and Records Office of Prince Edward Island (PAROPEI), Charlottetown, Prince Edward Island (emphasis in original). The authors would like to thank the staff at the PAROPEI for copying many documents and answering many questions as well as Melanie Sampson for professional research assistance. We are also thankful for the suggestions offered by the anonymous peer reviewers for *Acadiensis*.

2 *Royal Gazette and Miscellany* (Charlottetown), 19 November 1791.

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repealed in 1825.[3] But why did the Prince Edward Island Assembly repeal the 1781 act long after slavery had ceased to exist on the island? Why bother to repeal a dead letter except as part of an exercise in statute law revision? And who promoted and introduced both acts and why?

These two acts of the Prince Edward Island Assembly open up profound questions about slavery, slave life, and slave emancipation legality. They also present historians with an interesting paradox: why did the Maritime colony with the smallest number of slaves and slaveholders pass the only law relating to black slavery? It is significant that Prince Edward Island was the only jurisdiction in northern British North America that enacted a law regulating slaves, but the standard and seminal works about the history of Prince Edward Island do not examine slavery. For example, J.M. Bumsted, W.S. MacNutt, and Francis W.P. Bolger do not mention slavery or the concomitant development of racist attitudes toward people of African descent.[4] Indeed, in an otherwise excellent biographical entry about one of the Island's largest slaveholders, Colonel Joseph Robinson, Bumsted does not mention his slaveholding.[5] In many ways, the lack of attention to the Island's history of slavery says much about the general failure of Atlantic Canadian historians to examine the contours of slavery in the region. In the same way that Joanne Pope Melish argues in the case of New England, historians must rewrite the history of Atlantic Canada to include the experience of slaves.[6] And in the case of the largest slaveholding part of the northern states, Duncan Faherty writes:

> New York's collective amnesia concerning the history of slavery in the city is symptomatic of a larger cultural suppression that reconstructs slavery as a largely southern institution. This misconception stems from reductive representations of slavery as simply linked to agricultural systems rendered obsolete by the emergence of industrialization. Unfortunately, many Americans

3 "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 sess.), c. 7.

4 J.M. Bumsted, *Land, Settlement, and Politics on Eighteenth-Century Prince Edward Island* (Montreal and Kingston: McGill-Queen's University Press, 1987); W.S. MacNutt, "Fanning's Regime on Prince Edward Island," *Acadiensis* I, no. 1 (Autumn 1971): 37-53; Francis W.P. Bolger, ed., *Canada's Smallest Province: A History of Prince Edward Island* (Charlottetown: The P.E.I. 1973 Centennial Commission, 1973). See also Errol Sharpe, *A People's History of Prince Edward Island* (Toronto: Steel Rail, 1976); Andrew Hill Clark, *Three Centuries and the Island: A Historical Geography of Settlement and Agriculture in Prince Edward Island* Canada (Toronto: University of Toronto Press, 1959); D.C. Harvey, "Early Settlement and Social Conditions in Prince Edward Island," *Dalhousie Review* 11 (January 1932): 448-61; Matthew George Hatvany, "Tenant, Landlord and the New Middle Class: Settlement, Society and Economy in Early Prince Edward Island, 1798-1848" (PhD diss., University of Maine, 1996); and Rusty Bittermann, *Rural Protest on Prince Edward Island: From British Colonization to the Escheat Movement* (Toronto: University of Toronto Press, 2006). For a new synthesis and bibliography, see Cole Harris, *The Reluctant Land: Society, Space and Environment in Canada before Confederation* (Vancouver: University of British Columbia Press, 2008), 196-203, 226.

5 J.M. Bumsted, "Joseph Robinson," *Dictionary of Canadian Biography Online*, vol. 5, 1983, http://www.biographi.ca/EN/ShowBio.asp?BioId=36758&query=Joseph%20AND%20Robinson.

6 Joanne Pope Melish, *Disowning Slavery: Gradual Emancipation and "Race" in New England, 1780-1860* (Ithaca, NY: Cornell University Press, 1998), xi-49.

> still imagine the enslavement of Africans as having happened only in the South. This inadequate, but popular, sense of the past liberates the North from having to examine its own participation in slavery, effectively positing that the Mason-Dixon line divided the United States into an abolitionist North and a proslavery South.[7]

The historical amnesia about slavery in New York and New England also extends to Canada in general and the Maritimes in particular as, in some ways, this region is an extension of northern forgetfulness about slavery. Slavery is not seen as an integral part of this region's history, but rather as an alien and exceptional practice imported from the United States. Instead, this region's place within the story of American slavery is that it is most often seen as a haven for escaped slaves – an 18th-century underground railroad of the east. Although this is part of the history of black people in the Maritimes, the importance of slavery to the history of the region still needs to be examined in detail by historians. As Afua Cooper points out in her recent book, "slavery has disappeared from Canada's historical chronicles, erased from its memory and banished to the dungeons of its past."[8] This article attempts to bring slavery to the forefront of regional discussions about race, racism, and the development of a pre-Confederation regional historiography.[9]

The enacting and repeal of slave law in Prince Edward Island also resulted in the making and understanding of race. The discrimination black Islanders faced in judicial decisions and other ways after the decline and disappearance of slavery underlines the failure of emancipation to bring equality to local people of African descent. The formation of racial understanding on the Island had its roots in the attitudes and circumstances that gave rise to the1781 slave law and the exploitation of black slaves. In many ways, the making of slavery and race connected this peripheral island to broader notions of black enslavement and inferiority that permeated the British Atlantic world in the late-18th and early-19th centuries.[10] Jim Hornby's work, for instance, provides a useful documentary overview of slaveholding and the individual experience of black slaves on the Island. Building on the insights of his *Black Islanders*, this article offers a short discussion about the problems of studying Island slaves and their general absence from the historiography, explores slave life under the English regime, and examines the historical context surrounding the enactment of the 1781 slave law and its 1825 repeal.[11]

7 Duncan Faherty, "'It Happened Here': Slavery on the Hudson," *American Quarterly* 58 (2006): 456.

8 Afua Cooper, *The Hanging of Angelique: The Untold Story of Canadian Slavery and the Burning of Old Montreal* (2006; Athens, GA: University of Georgia Press, 2007), 7.

9 See J.M. Bumsted, "'The Only Island There Is': The Writing of Prince Edward Island History," in *The Garden Transformed, 1945-1980*, ed. Verner Smitheram et al. (Charlottetown: Ragweed 1982). As recently as 2005 its author could describe this essay as still remaining "the only attempt at an overall historiographical appraisal." See J.M. Bumstead, "The Legal Historiography of Prince Edward Island," in *Essays in the History of Canadian Law,* vol. IX – *Two Islands: Newfoundland and Prince Edward Island*, ed. Christopher English (Toronto: University of Toronto Press, 2005), 44n3.

10 David Armitage and Michael J. Braddick, eds., *The British Atlantic World, 1500-1800* (New York: Palgrave Macmillan, 2002).

11 Jim Hornby, *Black Islanders: Prince Edward Island's Historical Black Community* (Charlottetown: Institute of Island Studies, 1991). Hornby's work may be read as a response and corrective to Harry Baglole, ed., *Exploring Island History: A Guide to the Historical Resources of Prince Edward Island*

In discussing Prince Edward Island slavery, historians are faced with two serious problems. First, there is a striking lack of evidence. The available documentation is scanty and only provides the most basic information about certain slaves. It is problematic to draw too many inferences from this small amount of data, but scholars have to make do with the documentation that is available. Second, despite the fleeting evidence about slavery on the Island, it is imperative to understand the experience of black slaves within the much broader history and historiography of North American slavery. Although this may strike some as an effort to take meager findings about Island slavery and make them fit broader patterns, it is rather to situate Island slavery in the general history of slavery in North America where it is rarely mentioned or discussed. Yet the local context of Prince Edward Island matters, and comparing the local slave experience to northern American slavery necessarily points to the obvious differences between the two regions. Prince Edward Island, for instance, was still in its early stage of colonization and economic development between 1767 and 1840, a period during which both New England and the Middle Colonies had developed more rapidly. Moreover, the Island faced a labor shortage until the 1850s that most other parts of the eastern North American seaboard did not. Trying to understand the experience of Prince Edward Island slaves in comparison to slaves in other regions does not mean denying the uniqueness of the Island's history.

Slaves and people of African descent are absent from Prince Edward Island historiography for several reasons. There were an unknown number of black people on the Island in the 18th and early-19th centuries, and scant primary source evidence exists about their experiences. It is problematic even to try to estimate the actual number of black slaves on the Island without a significant number of advertisements for runaways, sales or estate inventories, manumissions or bequests, court records or other primary sources. However, we can provide a general table of slave names from primary and secondary sources (see Appendix), where we have counted almost 50 slaves. The omission of black people and slavery from Island historiography is thus understandable because of small numbers. But this explanation only goes so far, and there is no doubt another, more subtle reason. Most histories of slavery are rife with stories of oppression of labouring, indentured, or enslaved groups. Prince Edward Island is no exception, but the focus on a landless class of workers has not included blacks or Aboriginal people; instead, there has been an emphasis on whites who suffered under the absentee landlords. In writing about the Escheat movement and how the tenants resisted the landlords, the history of other oppressed peoples such as blacks and Aboriginal people has been largely ignored.

Indeed, although slavery had ended by 1825 it became a symbol of the oppression

(Belfast, PE: Ragweed, 1977), which devotes chapters to First Nations people, Acadians, and "Island social history" but says not a word about the Island's historical black community that emerged from slavery. See also Robin W. Winks, *The Blacks in Canada: A History* (New Haven: Yale University Press, 1971), 44-5; H.T. Holman, "Slaves and Servants on Prince Edward Island: The Case of Jupiter Wise," *Acadiensis* XII, no. 1 (Autumn 1982): 100-04; H.T. Holman, "Peter Byers," *Dictionary of Canadian Biography*, vol. 5, 1983, http://www.biographi.ca/EN/ShowBio.asp?BioId=36421&query=Byers; William Renwick Riddell, "The Baptism of Slaves in Prince Edward Island," *Journal of Negro History* 6 (July 1921): 307-9; and Diane E. Whitcomb, "On Dembo's Trail: Black Ancestry on Prince Edward Island," *New England Historical and Genealogical Society NEXUS* 11 (February-March 1994): 18-21.

of Islanders by the absentee proprietors and a useful tool in the arsenal of the Escheat movement. Those opposed to the system liked to characterize the landlords as slave owners and the tenants as slaves. Tenant victims were fundamentally unfree because, like slaves, they were denied the right to hold property: the owned could not own. In his study, *Rural Protest on Prince Edward Island*, Rusty Bittermann shows how slavery's legacy was appropriated and manipulated by the opponents of the landholding system.[12] Since the Escheat movement arose while slavery was still in full flower, it is unsurprising that tenant farmers should compare themselves, or be compared with their landlords' (or landlords' agents) slaves. Whether it was escheat of proprietors' land or emancipation of slaves, the fundamental issue was the same: infringing upon the rights of private property. The issue was negotiated differently, of course, depending on the context. In the land question the government, after much uncertainty and hesitation, acted – and acted decisively. Emancipation of slaves was at first a matter of conscience by the individual slaveholder, and later this became generalized into a new, enlightened social consensus in which the owning of human beings, by reason of its moral turpitude, was deemed to undermine the foundations of law and civil society. Public opinion came gradually to accept that owning black people was sinful, which reflected poorly not on the victim but on the perpetrator.

While progressive imperial measures like the Colonial Slavery Abolition Act may have encouraged the Escheat movement, the emancipation of slaves – which took place long before 1833 – caused not a ripple.[13] After all, it benefited no one other than black people, who were conspicuous by their absence from the ranks of tenant farmers "enslaved" by the proprietors. The further slavery receded into the past, the more useful it became as an allegory of oppression for white persons who never were enslaved.

The land question aside, slavery has the potential to be one of Prince Edward Island's larger historical themes (which, as J.M. Bumsted points out, are few). Like the land question, for instance, slavery also "involved a number of important legal issues, particularly the matters of early Island property law and law enforcement."[14] But the land question, which originated about the same time as slavery, persisted much longer and has overshadowed slavery as it has everything else. Slaves and land, though, while different sources of wealth and social standing, share alike the status of private property. Yet slavery differed from land in that it was a question of workforce development. Slave property was slave labour; that was slavery's raison d'être. Slaves were meant to ensure a continuous, plentiful, and self-perpetuating supply of unwaged labour. This economic vision went unfulfilled, though, because the hoped-for influx of slaveholders or prospective slaveholders did not materialize. While Prince Edward Island's 1781 slave law was intended to address a situation that never really came to pass, so too the lives of the slaves on the Island are too poorly documented to quantify accurately. The slave law is mere trace evidence of their presence, actual or anticipated.

Black migration to the Maritimes, coerced and by choice, can be divided into two distinct periods: before 1783 and after 1783. The first period was defined by small and

12 Bittermann, *Rural Protest On Prince Edward Island*, 370, index, s.v. "slavery."
13 On this subject generally, see Bittermann, *Rural Protest*, 153, 164, 169, 226, 272, 318-19n118.
14 Bumsted, "Legal Historiography of Prince Edward Island," 40.

scattered numbers of people of African descent who worked within the French and British empires. The first Africans probably worked as translators and laborers for the French.[15] Ken Donovan points out that, under the French regime on Prince Edward Island, "Jean Pierre Roma owned at least 12 slaves, making him the largest slave owner in the colony."[16] The first substantial contact between black people and European settlers in the Maritimes occurred in Île Royale between 1713 and 1758. As Ken Donovan's work demonstrates, this slave population was multiethnic, multicultural, and multilingual. Generally, they worked as domestics but also participated in other forms of work as deemed necessary by their owners.[17] After the Acadian expulsion and the defeat of the French, the British offered land to the New England Planters and, as a result, 8,000 Planters resettled in the Maritimes between 1759 and 1765. It was within this migration that African Americans came as slaves.[18] In the case of Prince Edward Island, separated from Nova Scotia in 1769 in preparation for settlement, Governor Walter Patterson allegedly kept a "mulatto mistress" in 1770. Four years later, however, he noted that there "are no blacks" residing on the Island, which probably meant no blacks other than slaves.[19] Prior to the American Revolution black slaves were a significant presence throughout greater Nova Scotia or old Acadie, but their exact number is unknowable.

The defeat of the British in the American colonies set the stage for the mass migration of free blacks and Loyalist slaveholders, along with their chattels, to the Maritimes. The total number of black migrants to the Maritimes in the wake of the Revolutionary War is disputable because documentation is fragmentary, but it seems that the total number may have been as high as 5,000 persons. The story of free black resettlement after the Revolutionary War is so familiar to Maritime historians that it hardly needs to be retold in this article. In short, approximately 3,500 ex-slaves who achieved their freedom by escaping to British lines were guaranteed mobility and protection against re-enslavement. The majority settled in Nova Scotia and in what would become New Brunswick.[20] Another aspect of this migration was the importation of slaves to the region. Loyalist slaves faced continued bondage, oppression, and possible separation from family and friends. They came from various

15 John Johnston, "Research Note: Mathieu Da Costa along the Coasts of Nova Scotia: Some Possibilities," *Journal of the Royal Nova Scotia Historical Society* 4 (2001): 152-64.

16 Kenneth Donovan, "Slaves and Their Owners in Ile Royale, 1713-1760," *Acadiensis* XXV, no. 1 (Autumn 1995): 10-11.

17 Donovan, "Slaves and Their Owners," 3-32; Kenneth Donovan, "Slaves in Ile Royale," *French Colonial History*, 5 (2004): 25-42.

18 Margaret Conrad, ed., *Making Adjustments: Change and Continuity in Planter Nova Scotia, 1759-1800* (Fredericton, NB: Acadiensis Press, 1991); Margaret Conrad and Barry Moody, eds., *Planter Links: Community and Culture in Colonial Nova Scotia* (Fredericton, NB: Acadiensis Press, 2001); Allen Robertson, "Bondage and Freedom: Apprentices, Servants, and Slaves in Colonial Nova Scotia," *Collections of the Royal Nova Scotia Historical Society*, 44 (1996): 57-69.

19 Hornby, *Black Islanders*, 2.

20 The literature about free blacks during and after the Revolutionary War is voluminous. For an overview of the historiography, see Harvey Amani Whitfield, "Black Loyalists and Black Slaves in Maritime Canada," *History Compass* 5 (2007): 1980-1997. See also Graham Russell Hodges, ed., *The Black Loyalist Directory: African Americans in Exile after the American Revolution* (New York: Garland, 1996); Winks, *Blacks in Canada*; James W. St. G. Walker, *The Black Loyalists: The Search for a Promised Land in Nova Scotia and Sierra Leone, 1783-1870* (London: Longman and Dalhousie

parts of colonial America and brought diverse cultural and work experiences to the Maritime region. The majority came from New England and the Middle Colonies, with a smaller contingent from the colonies to the south. Within the migration of people of African descent to Nova Scotia and New Brunswick, a trickle of Loyalists with slaves found their way to the Island.

Most if not all black people who migrated to Prince Edward Island before, during, and after 1783 were slaves. But these slaves arrived on the Island in diverse ways and from different areas. Colonel Joseph Robinson (born in Virginia, but residing in South Carolina during the Revolutionary War), who settled first in New Brunswick, brought several slaves, including Amelia (who according to a baptismal record in Prince Edward Island had been "born in Virginia").[21] Robinson had hoped to bring at least two other slaves to the Island, but the rebels had confiscated his property. In his Loyalist claim, Robinson complained that he had "Lost a Negroe Wench and Child, left at Ninety-Six [South Carolina], when Claimant went to the Cherokee Nation, the rebels came and plundered him, took his wife Prisoner, took the Negroe and Child." Robinson also noted that his "Negroe Wench" was very valuable.[22] The slaves of Thomas Haszard had labored on his farm in Boston Neck, Rhode Island. They accompanied their owner to Prince Edward Island and eventually settled in Charlottetown.[23] Edmund Fanning, lieutenant-governor from 1787 to 1805, brought a few slaves from North Carolina to the Island. And William Schurman left New Rochelle, New York, and moved his slaves to Bedeque.[24] For his part, William Creed migrated from Massachusetts to Prince Edward Island with his slave Dimbo Suckles in the 1780s. Suckles seems to have been a rarity among Island slaves in that he originally came from Africa. He was not, however, the only one from that continent. As Kenneth Donovan notes, at least four of Jean Pierre Roma's slaves were from Africa. According to an oral tradition recorded by a descendant of William Creed in the 1960s, Suckles was "an African & said his father was a chief with 1,500 head of cattle."[25] As a young boy, so the Charlottetown *Guardian* alleged, slave hunters "dragged him from his

University Press, 1976); Ellen Gibson Wilson, *The Loyal Blacks* (New York: Capricorn Books, 1976); Barry Cahill, "The Black Loyalist Myth in Atlantic Canada," *Acadiensis* XXIX, no. 1 (Autumn 1999): 76-87; James W. St. G. Walker, "Myth, History and Revisionism: The Black Loyalists Revisited," *Acadiensis* XXIX, no. 1 (Autumn 1999): 88-105 (Walker's response to Cahill); Mary Louise Clifford, *From Slavery to Freetown: 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; reprint, 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 Press, 2006); Ruth Holmes Whitehead and Carmelita A.M. Robertson, eds., *The Life of Boston King: Black Loyalist, Minister and Master Carpenter* (Halifax: Nova Scotia Museum and Nimbus, 2003); and Carole Watterson Troxler, "Re-enslavement of Black Loyalists: Mary Postell in South Carolina, Est Florida, and Nova Scotia," *Acadiensis* XXXVII, no. 2 (Summer/Autumn 2008): 70-85.

21 Amelia Byers, Baptismal Record, St. Paul's Church of England, PAROPEI. Robinson was originally from Virginia.

22 Joseph Robinson, Loyalist Claims Commission, AO12/49/332, Nova Scotia Archives and Records Management (NSARM).

23 Hornby, *Black Islanders*, 7; Orlo Jones and Doris Haslan, eds., *An Island Refuge: Loyalists and Disbanded Troops on the Island of St. John* (Charlottetown: Abegweit Branch U.E.L, 1983), 328.

24 Hornby, *Black Islanders*, 22.

25 Richard Creed, November 1964, file "Negroes," PAROPEI.

hiding place . . . with an iron hook attached to a long handle, and to his dying day he could show the mark on his back made by that cruel hook."[26]

Island slaves not only came from various points in the Atlantic world, but they suffered multiple forced migrations from the New England and more southern colonies. Those slaves who had lived in areas overrun by the rebels early in the war were quite often transported by their owners to areas supported by the British armed forces or where there was a substantial contingent of Loyalists. Some slaves were forced to migrate from the interior of a southern colony such as South Carolina to occupied Charleston and eventually to New York City before coming to the Maritimes. And several slaveholders who eventually settled in Prince Edward Island had first spent some time in Nova Scotia or New Brunswick. Island slaveholders William Schurman and Edmund Fanning, for example, both lived in Nova Scotia before finally settling in Prince Edward Island. In a few cases, the Atlantic world journeys of men like Dimbo Suckles went beyond the transnational movement from slavery to slavery to a transoceanic experience of freedom to slavery.

Table 1: Prince Edward Island Slave Origins

Slave	Place of Origin	Owner
Amelia Byers	Probably Virginia	Joseph Robinson
Dimbo Suckles	Probably Africa, Massachusetts	William Creed
Susannah Schurman	Probably New York	William Schurman
David Sheppard	Probably North Carolina	Edmund Fanning
Sancho Campbell	Probably South Carolina	Joseph Robinson
Black Bill	Probably New York	William Schurman
Catherine/Simon	PEI	Haszard Family

The migration of Loyalists with slaves to Prince Edward Island differed from the flow of slaves into New Brunswick and Nova Scotia in two notable ways. First and most obviously, the number of slaves who migrated to Prince Edward Island was relatively small – only a fraction of the enslaved blacks who were forcibly moved to the region. Second, the transportation of slaves to Prince Edward Island's neighboring colonies occurred mostly during 1783 (this migration was preceded by much smaller ones from Boston and Charleston in 1776 and 1782 respectively). In contrast, the arrival of enslaved blacks on Prince Edward Island took place over several years, both before 1775 and after 1783; some of the more prominent slaveholders, such as Colonel Robinson, did not arrive until 1789.[27]

The migration of American slaves from diverse regions and at different times resulted in the slave experience on Prince Edward Island being fragmented and divided. Urban slaves from Boston, for instance, found themselves in the same

26 *The Guardian* (Charlottetown), 23 June 1906; T.W. Smith, "The Slave in Canada," *Collections of the Nova Scotia Historical Society* 10 (1899): 70; Hornby, *Black Islanders*, 3-11; Indenture of Dembo, 12 November 1796, Conveyances, RG 16, vol. 82, fol. 281, PAROPEI. As Hornby points out, the spelling of Dimbo varies in the surviving documents.

27 J.M. Bumsted, "Joseph Robinson," *Dictionary of Canadian Biography Online*, vol. 5, 1983, http://www.biographi.ca/EN/ShowBio.asp?BioId=36758&query=Joseph%20AND%20Robinson.

neighborhood as slaves from rural Virginia. In a similar way, analysis of that experience of slavery can only be described in "fragments." Thanks to the work of Hornby and some limited, but enticing primary sources, it is possible to offer several insights into the character of Island slavery by examining slave ownership, slave families, work patterns, and master/slave relations. On Prince Edward Island, masters came from the ranks of the elite. Generally, masters possessed one or two slaves with a few owning up to five.[28] The presence of black slaves in the households of wealthy Prince Edward Island homes followed slaveholding patterns in colonial Boston, where, "for the most part, owners were people of wealth who lived opulently."[29] The use of slaves as symbols of wealth and status is underlined in the statement cited by Hornby that the only gentlemen in eastern Prince County were those who "brought family slaves with them." Clearly, gentility among the Loyalists had been inextricably linked to owning slaves. The two largest slaveholders, Loyalists Colonel Robinson and Lieutenant-Governor Fanning, both enjoyed wealth and high social status. Yet pre-Loyalists such as Chief Justice Peter Stewart and Governor Walter Patterson also owned slaves. Loyalist William Schurman owned a business, and his will indicates he enjoyed some degree of wealth. As Hornby points out, "The local elite – both Loyalists and others – was largely a slave-owning group."[30] In this sense, slaveholding differed greatly from Nova Scotia and New Brunswick where it was common for the middling sort to possess slaves. For example, grocer Robert Wilkins of Shelburne owned at least one slave, while baker Richard Jenkins owned three.[31] Slave owners on Prince Edward Island were wealthy and politically well connected; their human chattels, though, were usually isolated with only one or two per slaveholding household.

Slaves were passed down through families and, in some cases, a new generation of slaves was born on the Island. For example, in 1802, Island slaveholder Thomas Haszard gave "to grand Daughter Hariot Clarissa Haszard and my grand Daughter [Louisa] Haszard one molatta girl about five years of age, named Catharine." Haszard also sold to William Haszard "a certain mollatta Boy of three years of age called Simon."[32] Given the relatively late date of this sale and the age of the child slaves, it is clear that the Haszard family intended to keep a new generation of slaves. Colonel Robinson also owned the children of his slave Amelia and, as he made clear in his ledger, an offer of freedom for Amelia and her husband did not extend to their children.[33] In Prince Edward Island, slavery lasted a few generations and masters remained loath to give up the cheap labor that their slaves provided. They were, so to speak, a renewable resource.

Prince Edward Island slaves experienced what one historian has described as

28 Hornby, *Black Islanders*, 15, 3-11.

29 Peter Benes, "Slavery in Boston Households, 1647-1770," *Slavery/Antislavery in New England* (2005): 17.

30 Hornby, *Black Islanders*, 10.

31 Book of Negroes, doc. 10,427, Sir Guy Carleton Papers, United Kingdom National Archives [PRO] (UKNA); *Nova Scotia Packet and General Advertiser* (Shelburne), 3 August 1786.

32 "Declaration by Thomas Hazard re. selling mulatto children, Nov 1802," acc. 2702, Smith Alley Collection, ser. 22, no. 878, PAROPEI.

33 *Examiner* (Charlottetown), 11 February 1881. As Hornby points out, Robinson probably wrote this document because two of his slaves were named Jack and Amelia.

"family slavery."[34] In New England and the Middle Colonies, most slaves and masters found themselves involved in nearly every aspect of life together. In contrast, southern slaves lived on larger farms or plantations in greater concentrations, which lessened daily interactions between masters and individual slaves.[35] Prince Edward Island slaves, for the most part, worked, ate, socialized, and slept in close proximity to their owners. Moreover, naming patterns of Prince Edward Island slaves indicates that many had become acculturated, as common male names included Jack, Sam, and Simon while female names included Catharine, Amelia, and Elizabeth.[36] This idea of family slavery is found in William Schurman's 1819 will. Although he made an offer to take care of his former slave, it is important to note how he referred to her place in the family: "And also my desire and Will is that my Negro Servant Susannah Schurman shall be provided for in the family as long as she wishes to remain in the family with meat drink and clothing as long as she lives but if it be her choice to leave the family my will is to give her fifty pounds lawful money of this Island to be raised out of my Estate."[37]

The only exception to this rule might have been Colonel Robinson's four slaves who "occupied little cabins on the corner of their master's farm."[38] All other Island slaves lived within white households. The integration of slaves into the family life of their masters, plus the small numbers of slaves, made the creation and development of a slave community rather difficult, but the available evidence does suggest that slaves socialized, married, and maintained contacts with one another. The small slaveholdings of Island masters also made it quite challenging for slaves to form families. In this sense, the problem of slave family formation on Prince Edward Island mirrored the difficulties faced by slaves throughout the Middle Colonies and New England.[39] The difficulties of finding a marriage partner, for example, are underlined by the story of Dimbo Suckles's search for a wife. His owner, William Creed, had to purchase one of Governor Fanning's female slaves for Suckles to marry.[40] And sometimes it is unclear if young slaves had much contact with their parents. For example, Thomas Haszard sold two young "mollatta" children to family members. The bill of sale makes no mention of the children's parents; after all, it was not they who were being sold.[41]

34 William D. Pierson, *Black Yankees: The Development of an Afro-American Subculture in Eighteenth Century New England* (Amherst: University of Massachusetts Press, 1988), 25-36; also see Melish, *Disowning Slavery*, 11-49.

35 Ira Berlin, *Many Thousands Gone: The Last Two Centuries of Slavery in North America* (Cambridge, MA: Harvard University Press, 1998); Leslie M. Harris, *In the Shadow of Slavery: African Americans in New York City, 1626-1863* (Chicago: University of Chicago Press, 2003); The Dublin Seminar, *Slavery/Anti-Slavery in New England*. A good and brief overview is Donald R. Wright, *African Americans in the Colonial Era: From African Origins through the American Revolution,* 2nd ed. (Wheeling, IL: Harlan Davidson, 2000).

36 Cheryll Ann Cody, "There Was No 'Absalom' on the Ball Plantations: Slave-Naming Practices in the South Carolina Low Country, 1720-1865," *American Historical Review*, 92 (June 1987): 563-96. An exploration of African origins among American slaves is John K. Thornton, "Central African Names and African-American Naming Patterns," *William and Mary Quarterly*, 50 (October 1993): 727-42.

37 Will of William Schurman, 1819, RG 62, ser. 1, lib. 1, fol. 130, PAROPEI.

38 Smith, "The Slave in Canada," 69.

39 Harris, *Shadow of Slavery*, 33; Horton and Horton, *In Hope of Liberty*, 27.

40 *The Guardian*, 23 June 1906.

41 "Declaration by Thomas Hazard re. selling mulatto children, Nov 1802," acc. 2702, Smith Alley Collection, ser. 22, no. 878, PAROPEI.

It is not surprising that Colonel Robinson owned one slave family, which was kept together. Robinson's slaves Amelia and Jack had children who were baptized at the local Church of England.[42] The fact that Robinson had many slaves (by Prince Edward Island standards) allowed for the formation and maintenance of this family. However, another document demonstrates the difficulties that even this fortunate family encountered:

> 19th July 1800-I was under the necessity of telling my servants, Jack and Amelia to get them to go to Prince Town-that at the end of one year, if they behaved themselves well (of which I was to be the judge) and that neither Mrs. _____ or myself wanted either of them, I would give them their liberty; that is to say, only for themselves two, not liberty for any children they now have or may have. But I also told them that if they or either of them misbehaved, they forfeit all expectations thereto. I also told them as long as either of us wanted them, they were not to look for or expect their liberty, but to remain slaves as long as we or either of us, thought proper.[43]

The difficulties of slave family life only partially defined the Island slave experience. As historian Ira Berlin argues, labour "defined the slaves' existence; when, where, and especially how slaves worked determined in large measure the course of their lives."[44] In the context of the Island, it is useful first of all to ask whether poor labouring whites faced as difficult or even worse situations as black slaves. In other words, was Island slavery a kinder institution than the free labor market faced by poor white workers? Some might argue that poor white workers suffered more than Island slaves, who allegedly had it better in terms of at least having food, shelter, and work. Although Matthew Hatvany and Rusty Bittermann have shown the devastating circumstances faced by poor white migrants to the Island, slaves had it worse for several reasons.[45] First, not one slave made the choice to settle on the Island. They were all taken to Prince Edward Island against their will. Second, while we have no evidence to evaluate whether slaves were better off in terms of food or clothing, they probably did not receive better clothing or more food than the poorest white labourers. Third, in terms of work, black slaves were on-call twenty-four hours a day and seven days a week. They had household chores along with agricultural responsibilities. And fourth, slaveholders determined whether or not their slaves could form families as well as the slaves' ability to keep these families together. While it was not pleasant to be a poor white labourer on the Island, being an enslaved person of African descent was clearly worse.

Prince Edward Island slaves worked within a mixed economy (agricultural and

42 Amelia Byers, Baptismal Record, St. Paul's Church of England, PAROPEI.

43 *Examiner*, 11 February 1881.

44 Berlin, *Many Thousands Gone*, 5.

45 Bittermann, *Rural Protest*, chapters 1 and 2; Matthew Hatvany, "'Wedded to the Marshes': Salt Marshes and Socio-Economic Differentiation in Early Prince Edward Island," *Acadiensis* XXX, no. 2 (Spring 2001): 40-55.

domestic) that mirrored the experience of most slaves in New England and the Middle Colonies. In these places, the economy did not depend on slave labour but slaves still played an important role in agricultural production. Their work within the households also freed up other members of the master's family to pursue economic opportunities. This meant that slaves had little time for rest or to pursue their own interests. Generally, Prince Edward Island slaves worked as domestics and their tasks were time-consuming, including cooking, cleaning, washing clothes, and providing childcare.[46] And as most slaves lived with their owners, they could be called on at anytime during the day or night to take care of some needed task. In addition to household chores, Prince Edward Island slaves worked the farms of their owners. They broke ground and performed other tasks such as planting, harvesting, raking, mowing, and repairing fences.[47] Similarly to slaves in New England and the Middle Colonies, slaves in Prince Edward Island also cut wood, grazed cattle, and brought food to market. For example, the Bovyer family brought a few slaves with them to PEI. The Bovyer homestead consisted of 100 cleared acres and livestock such as horses, cattle, sheep, and hogs. Their slaves, including an adult male named "Ceaser" [*sic*], were responsible for the tasks associated with farming.[48] The wills of William Schurman and Colonel Robinson indicate that their slaves engaged not only in housework but also agricultural duties. Both men possessed large tracts of land and also substantial houses.[49] The multiple responsibilities of at least one of Schurman's slaves were captured by an early historian of Bedeque; his duties included sawing pine trees into sellable boards and hauling them to Charlottetown.[50] The experience of Prince Edward Island slaves mirrored the work of slaves in the northern United States, which Berlin summed up as labouring in "all aspects of the northern agricultural regime."[51]

The exact contours of master/slave relations, though, are difficult to uncover because of the paucity of primary source documentation. The available material indicates that, similar to American slavery, these relationships ran the gamut from affection to complete resentment. As most historians of American slavery argue, property in humans rested partly on a negotiated relationship between master and slave. Both individuals had customary rights and responsibilities that they were expected to observe. If these customary expectations were broken, slaves might resort to various acts of resistance such as running away, working indifferently, or stealing from their owners.[52] Much more common was the fact that many slaves were subjected to the cruel whims of masters who could exploit their labour and prevent them from enjoying the creation of family ties or the exercise of personal liberty. And even if the customary privileges and responsibilities were respected, Prince Edward

46 Melish, *Disowning Slavery*, 12-14, 13-21; Graham Russell Hodges, *Root & Branch: African Americans in New York and Easy Jersey, 1613-1863* (Chapel Hill, NC: University of North Carolina Press, 1999), 107-14; Graham Russell Hodges, *Slavery and Freedom in the Rural North: African Americans in Monmouth County, New Jersey, 1665-1865* (Madison DE, Madison House, 1997), 44-50.

47 Hornby, *Black Islanders*, 16-19.

48 Jones and Haslam, *Island Refuge*, 43.

49 Will of William Schurman, 1819, RG 62, ser. 1, lib. 1, fol. 130, PAROPEI; Will of Joseph Robinson, 1807, RG 62, ser. 1, lib. 1, fol. 130, PAROPEI.

50 Hornby, *Black Islanders*, 22.

51 Berlin, *Many Thousands Gone*, 182.

52 Berlin, *Many Thousands Gone*, 1-14. The classic statement about paternalism, of course, is Eugene D. Genovese, *Roll, Jordan, Roll: The World the Slaves Made* (New York: Pantheon, 1974).

Island slaves suffered the same fate as their brethren in the northern United States in that, as historian Leslie Harris points out, "enslavement dominated every facet of colonial black New Yorkers' lives – the work they did, their ability to form families, their religious practices, even how they defined themselves."[53]

Broad scholarly depictions of colonial slavery as a "social institution" tend to downplay an important aspect of the slave experience – that it was neither "social" nor an "institution" but instead a class of personal property (albeit of a highly unusual character).[54] A recent study of "property rights in British settler societies," for example, gives two pages to slavery abolition under the heading "statutory reform in Canada" and limits the discussion to Upper Canada.[55] Prince Edward Island's slave law repeal act of 1825 is not mentioned. Similarly, Bruce Ziff's first instance in four representative examples of 19th-century Canadian law reform "that seem to be telling moments in the forging of a Canadian legal sensibility" is Upper Canada's 1793 anti-slavery act, which limited the importation of slaves from the United States and provided for the gradual emancipation of the children of slaves on reaching adulthood. As the act implicitly recognizes, it was impossible to abolish slavery, even gradually, without violating private property. While this focus helps explain why the Upper Canada act had little or no direct impact on the state of slaves, it also helps account, albeit indirectly, for why Prince Edward Island's statute was passed (with a suspending clause) after slavery had disappeared: slavery had not been abolished by an act of Parliament for England let alone the colonies.

Attempts to abolish slavery statutorily in both New Brunswick and Lower Canada (Québec) failed for the same reason. No colonial legislature could abolish private property or interfere with the right to hold it or even determine what could constitute it. Slaves were a uniquely uncommon form of personal property protected by the common law. When colonial slavery abolition finally came, in 1833, it took the form of expropriation by the Crown for which the private property owners were well compensated. But by then slavery had disappeared from all of British North America. It was the slow-dying casualty of a judicial activist-interventionist strategy that saw judges fatally undermine the property right by obliging slave-owners, whose slaves had liberated themselves by absconding and had got into court on habeas corpus, to prove to the court's satisfaction that the slaves claimed were really property and really theirs. Judicial emancipation saw slavery abolished one slave at a time and slavehold tenure cease to be viable.[56]

If Upper Canada's 1793 act was, as Ziff maintains, "the first abolitionist statute in the Empire," then Prince Edward Island's 1781 act was the only statute in the post-revolutionary, second British Empire to regulate slaves explicitly. Its enactment suggests a debate around a point of law – whether or not settlers brought with them

53 Harris, *Shadow of Slavery*, 12.

54 See, for example, Justice Charles R. McQuaid, "Slavery as a Social Institution in Colonial Prince Edward Island," acc. 4304, C.R. McQuaid fonds, item 11, PAROPEI.

55 Bruce Ziff, "Warm Reception in a Cold Climate: English Property Law and the Suppression of the Canadian Legal Identity," in *Despotic Dominion: Property Rights in British Settler Societies,* ed. John McLaren et al. (Vancouver & Toronto: University of British Columbia Press, 2005), 106-8.

56 For a general overview of this matter, see Barry Cahill, "Slavery and the Judges of Loyalist Nova Scotia," *University of New Brunswick Law Journal* 43 (1994): 73-135.

the laws of their place of origin and, if so, whether that law attached itself to slaves. This is "reception" – a term that appears in its ordinary sense in the title of Ziff's article – but which has a quite different meaning in law. Reception is a common-law rule of thumb for determining when English statute law ceased to be in force in new lands acquired by conquest, confirmed by treaty, and followed by settlement. Prince Edward Island is a case in point, but treatments of reception tend to offer presentist, aprioristic legal readings of past law rather than analyze empirically how the process worked out in practice on the ground at the time. The legal concept of reception as a fixed one-off moment in time does not lend itself well to interpreting, other than legalistically, evidence such as adjudication, colonial legislation, official dispatches and law officer reports, and recommendations underlying orders in council confirming or disallowing colonial laws. These contemporaneous origins and sources of law reveal that reception was an unstructured process rather than a frozen-in-time terminus ante quem [the end point of a period in time]. The legal concept of reception, for example, could not take into account whether, much less how, Scottish emigrants to Prince Edward Island before and during the American War of Independence might have brought, or, more importantly, been thought to have brought, Scottish law with them as their legal birthright into an English common-law colony where secure slavehold tenure was customary. Paradoxically, a Scottish immigrant to Prince Edward Island might hold slaves though he could not do so in Scotland, where the customary illegality of slavery was upheld by the supreme civil court in 1778.[57] The putative reception of the Scottish law of slavery plays no part in the legal history of Prince Edward Island. Nevertheless, the very existence of the 1781 act prohibiting emancipatory baptism suggests that the Scottish law of slavery was implicitly "received" along with the Scottish immigrants arriving in numbers over the previous decade, and deemed to be in force until barred by local legislation.[58] Approaching reception from an historical rather than a past-law perspective allows the historian to refine and nuance the concept in line with evidence of what actually happened and why. Only then can a legal concept developed later and applied retrospectively to the interpretation of law-related evidence serve the purpose of historical explanation.

From 1767 onward, most of the land in Prince Edward Island was owned by "proprietors" – absentee landlords in England and Scotland who operated mainly

57 John W. Cairns, "Knight, Joseph (born c.1753)," *Oxford Dictionary of National Biography*, ,http://www.oxforddnb.com/view/article/93749. See also John W. Cairns, "*Knight v. Wedderburn,*" in *The Oxford Companion to Black British History*, ed. David Dabydeen et al. (Oxford: Oxford University Press, 2007), 244-6 as well as, more generally, Iain Whyte, "Black Slaves in Scotland and Baptism," in Iain Whyte, *Scotland and the Abolition of Black Slavery, 1756-1838* (Edinburgh: Edinburgh University Press, 2006), 9-40; John W. Cairns, "Stoicism, slavery, and law: Grotian jurisprudence and its reception," in *Grotius and the Stoa*, ed. H.W. Blom and L.C. Winkel (Assen, The Netherlands: Royal Van Gorcum, 2004), 197-232; and John W. Cairns, *The Scottish Law of Slavery* (forthcoming).

58 Two relevant recent essays in the history-of-law genre are Margaret McCallum, "Problems in Determining the Date of Reception in Prince Edward Island," *University of New Brunswick Law Journal* 55 (2006): 3-10 and J.M. Bumsted, "Politics and the Administration of Justice on Early Prince Edward Island, 1769-1805," in *Two Islands*, 48-78. Interestingly, Bumsted observes "other aspects of the law, both in substance and in practice, might be adopted or adapted from other British jurisdictions, including Scotland" (51). A brief but sensible and historically informed discussion of reception by Bumsted follows this comment.

through local agents. Among the more active proprietors was Sir James Montgomery, father of Scottish emigration to the Island, who in 1781 was lord advocate (attorney general) of Scotland. It was Montgomery who tellingly referred to his tenants/servants/retainers shipped to PEI in 1770 as "white negroes."[59] The chief justice of the colony was another Scot, Peter Stewart: a protégé of Montgomery, brother of a proprietor, and known slave-owner. Stewart's biographer observes that "what legal training he had was in Scottish law rather than the English common law that Whitehall always expected to serve as the basis for a colonial judicial system."[60] But Stewart, as a slave owner, had motive to ensure that the Scottish law of slavery did not obtain in Prince Edward Island. The Island slave law was enacted in 1781, when Stewart, as ex officio president of the Council, was an active legislator. Stewart had come to Prince Edward Island in 1775, three years before the judges in Scotland declared the custom of the country to be that slavery was not and never had been legal. The reasoning was that Scotland was a Christian nation, and that Christian conversion and consequent baptism set a slave free from slavery as much as it did from sin. The Prince Edward Island act did not discourage the baptism of slaves – that was accepted and it continued to be done – but neither could the act be used to justify emancipation. Baptism made slaves Christians; it did not make them free.

Tension and uncertainty as to what laws were actually in force (or could be enforced) existed at the very summit of the administration. Prince Edward Island at the time was more or less a Scottish colony (far more Scottish than Nova Scotia or "New Scotland"). The 1781 slave law was a pre-emptive measure intended to reassure both recent arrivals and prospective immigrants that Prince Edward Island was open for business to slaveholders including – and perhaps especially – Scotsmen, who could not hold slaves at home. The enactment would have been deemed a matter of public interest because most of the settled immigrant population was Scottish and those settlers looked to government to remedy the baleful effects of Scottish law on human chattels. In practical terms the slave law did not interfere with any slaveowner's right to manumit his slave. It simply limited the scope of emancipation to manumission and deprived the slave of an opportunity to emancipate himself or herself that he or she might otherwise have had.

Prince Edward Island's slave law drew little or no attention when enacted. It came in the midst of a politically contentious time, which J.M. Bumsted describes as "grabbing for land" – a different kind of property from that addressed in the slave law. At the same time, though, there was a strong similarity. When the governor and legislature were taking steps to confiscate and sell absentee proprietors' lands on which quitrent had not been paid, they were also acting to uphold, in Bumsted's words, "one of the major watchwords of eighteenth-century Britain: the sacred right of property."[61] Whether the property was real (land) or personal (chattels) hardly mattered; the principle was the same.

The slave law was a perfect example of what Bumsted, writing about developments

59 See J.M. Bumsted, "Sir James Montgomery and Prince Edward Island, 1767-1803," *Acadiensis* VII, no. 2 (Spring 1978): 81.

60 J.M. Bumsted, "Stewart, Peter," *Dictionary of Canadian Biography (DCB): Volume V, 1801 to 1820* (Toronto: University of Toronto Press, 1983): 777.

61 Bumsted, *Land, Settlement and Politics*, 83, 86.

during 1780 in the Island legislature session, saw as legislative enactments "obviously looking forward to a conclusion of wartime hostilities, to the end of government largesse, and to a return to settlement and development."[62] In anticipation of victory, peace, and a return to normality, government wanted to ensure that slavehold tenure was secured against potential threats, such as legal birthright or "baggage" from Scotland.[63] That being said, there is no direct evidence as to what triggered the slave law or who promoted it. We do not know whether it was an initiative of the Assembly or the Council. We do not even know who wrote it, though Chief Justice Stewart seems a likely candidate. Another is Attorney General Phillips Callbeck, an Irish lawyer who was also a slaveholder, as were Governor Patterson and Speaker of the House Walter Berry. The same was probably also true of Thomas Desbrisay, lieutenant-governor and ex officio president of the Council in its legislative capacity.

What is known is that, on 1 March 1781, Governor Patterson wrote the secretary of state: "Though I had a meeting of our Assembly in July last, yet I found it would be both for the interest of the Island to have an other meeting this winter, and accordingly I call'd an Assembly on the 20th of last Month, when, after sitting 20 Days, they passed the following Laws to which I have given my assent . . . ."[64] Among the bills passed was *An Act declaring that Baptism of Slaves Shall not exempt them from Bondage*, the pertinence and appropriateness of which were such that the Governor did not bother to provide an explanatory gloss.[65] Even the law officer of the Board of Trade, Richard ("Omniscient") Jackson, KC, MP, to whom colonial laws were referred for a legal opinion on their validity, pronounced it materially unobjectionable and "of public utility."[66] How could any law for the greater protection of private property not be? Given the Scottish law against slavery, moreover, so recently confirmed and declared, human chattels posed a special threat to property rights, personal property being more private and implicating greater security of tenure than realty.

Despite its title, preamble, and principal provision, the act had three separate and unrelated provisions that, taken together, amount to a germinal slave code. If doubts

62 Bumsted, *Land, Settlement and Politics*, 82.

63 Thomas Garden Barnes, "'As Near as May be Agreeable to the Laws of this Kingdom': Legal Birthright ad Legal Baggage at Chebucto, 1749," in *Law in a Colonial Society: The Nova Scotia Experience*, ed. Peter Waite, Sandra Oxper, and Thomas Barnes (Toronto: Carswell, 1984), 1-23.

64 Walter Patterson to Lord George Germain, 1 March 1781, Colonial Office (CO) 226/7/126, UKNA.

65 Statutes of PEI, 1781, c. 15. An excellent account, together with the full text of the act, appears in Hornby, *Black Islanders*, 3-5. A modern paraphrase under the heading "Early Laws" appears in Douglas Baldwin, *Land of the Red Soil: A Popular History of Prince Edward Island*, 2nd ed. rev. (Charlottetown, PE: Ragweed, 1998), 62. On slavery and conversion in the American colonies the locus classicus is John Codman Hurd, *The Law of Freedom and Bondage in the United States*, vol. I (Boston: Little, Brown, 1858), 168. For a general account, see Marcus W. Jernegan, "Religious Instruction and Conversion of Negro Slaves" [1916], reprinted in Marcus W. Jernegan, *Laboring and Dependent Classes in Colonial America, 1607-1783* (New York: Ungar, 1931), 24-44. Jernegan points out that the English law officers in 1729 issued an advisory opinion that "baptism did not alter the status of the slave" (27). As far as the attorney general and solicitor general were concerned, such was the common law of England.

66 Jackson's report, dated 8 March 1782, is in CO 226/2/61, UKNA ("Omniscient" was his nickname). The Lords Commissioners of Trade and Plantations had no opportunity to respond to Governor Patterson as the Board of Trade was summarily abolished by the new British government in May 1782.

had arisen "whether slaves, by becoming Christians, or being admitted to Baptism, should by virtue thereof, be made free" (preamble), then the Scottish law of slavery was suspected of being of full force and effect. The second provision secured the property right: enslaved blacks or mulattoes already present and accounted for or imported remained slaves until manumitted by their owner. There was to be no emancipation otherwise. The third and last provision recited the Roman law from which Scottish law itself ultimately derived. Slavehood descended matrilineally: the children of an enslaved woman were themselves slaves. Ergo the reference to mulattoes (children whose fathers were white); slave paternity was not legally material.

Nothing more is known about this personal property protection act, which one assumes was routinely enforced throughout the 30 or so succeeding years during which slavery persisted. It removed doubts arising as to whether the Scottish law of slavery was in force in Prince Edward Island, which perhaps was its larger purpose. It asserted the primacy of English common law over Scottish customary law.[67] Assuming that the American war would be won – Yorktown was still eight months away – and anticipating that large-scale Scottish immigration would resume immediately afterwards, the government wanted to assure prospective immigrants that private property rights were secure and that the scope of property itself was significantly larger than in Scotland. Scottish emigrant slaveholders would not be hampered or harassed, as they would have been at home, in the quiet enjoyment of their human chattels.

Between 1781, when the slave law was enacted, and 1825, when it was repealed, slavery in Prince Edward Island was gradually extinguished. There was no further legislation. The first series of consolidated statutes (stating the law as of 1788) includes the act without comment, so it must have remained good law until slavery ceased and it was no longer applicable or enforceable.[68] Lieutenant-Governor Fanning (a former lawyer and judge) set an example of public-spiritedness by manumitting both of his slaves. Some credit for the demise of slavery must also go to the Reverend James MacGregor (1759-1830), the Scottish Antiburgher Seceder missionary and radical abolitionist who in 1788 launched Canada's antislavery movement. In the 1790s MacGregor visited Prince Edward Island on more than one occasion and intervened with slave owners on behalf of their slaves.[69] One of the few resident proprietors accused those on the other side of the land question of comparing the landlord-tenant system with slavery.[70]

In 1802 slave Sam ran away from his English owner Thomas Wright and got himself into the Supreme Court on habeas corpus so that the court could investigate

67 On the former, see especially James Oldham, *English Common Law in the Age of Mansfield* (Chapel Hill & London: University of North Carolina Press, 2004), 305-23.

68 See Phillips Callbeck and Joseph Aplin, comps., *Acts of the General Assemblies of His Majesty's Island of Saint John* . . . (Charlottetown: James Robertson, 1789), 131 as well as Board of Trade (BT) 6/56/495, UKNA.

69 Hornby, *Black Islanders*, 29-31, 80. For historical context see 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, 1999), 189-201.

70 W.S. MacNutt, "Fanning's Regime on Prince Edward Island," *Acadiensis* I, no. 1 (Autumn 1971): 46.

the lawfulness of his being owned. Wright was able to produce proof of purchase, the court found no defect in title or on the face of the record, and Sam was reclaimed.[71] This approach to emancipation had been tested in Nova Scotia, where it worked, and in New Brunswick, where it had not. A contemporaneous Nova Scotia test case, *DeLancey v. Woodin*, took a different route. When slave Jack ran away and was taken into paid employment elsewhere, his owner successfully sued for the slave's fair market value. On arrest of judgment and a rehearing, counsel for the defendant argued that the common law action of trover lay only for personal property and that there could be no personalty in human beings. The plaintiff was nonsuited.[72] What is most striking about this proceeding is that the slave owner plaintiff retained the former solicitor-general and attorney general of Prince Edward Island, Loyalist Joseph Aplin, to prepare an advisory opinion on the case stated. The result was the only defense of slavery in Canadian legal literature.[73]

Alpin left Prince Edward Island for good in 1798, before slavery had begun to decline. While it is clear that slavery disappeared before 1825, it is unclear exactly when, why, or how it ended. Hornby is certainly right that "in practice [slavery] seems to have been eroded earlier [than 1825] by social and religious pressures."[74] Slaves were manumitted by will or otherwise, or simply absconded and were not pursued or reclaimed. The disappearance of slavery in Nova Scotia and later in New Brunswick probably also played a role. The famous Susannah ("Sook") Schurman was clearly no longer a slave in July 1819 when her former owner, Loyalist William Schurman, made generous provision for her in his will. As there is no record of her manumission, it may be assumed that slavery was untenable by that time.

If the reasons for passing the 1781 slave law are perfectly clear and understandable, the reasons for passing the 1825 act to repeal it are opaque. The circumstances were, to put it mildly, unusual. In autumn 1824 Prince Edward Island received a new lieutenant-governor, Colonel John Ready, who was thought to be the natural sibling, if not the son, of Colonial Secretary Earl Bathurst, who plucked him from relative obscurity to restore constitutional government to a misgoverned backwater.[75] Ready himself may well have been an anti-slavery advocate like his patron, Lord Bathurst, for an undocumented tradition persists that among his first official acts was to issue a proclamation abolishing slavery.[76] What is known, however, is that Ready quickly summoned the legislature, which under his predecessor had not sat for four years. At

71 Hornby, *Black Islanders*, 7.

72 T. Watson Smith, "The Slave in Canada," in *Collections of the Nova Scotia Historical Society, Volume 10* (Halifax: Nova Scotia Printing Company, 1899): 105-11.

73 [Jonathan Odell?], comp., *Opinions of Several Gentlemen of the Law on the Subject of Negro Servitude, in the Province of Nova-Scotia* (Saint John, NB: John Ryan, 1802); CO 226/18/243, UKNA.

74 Hornby, *Black Islanders*, 8.

75 Elinor Vass, "Ready, John," *DCB*, VII: 742-3. For historical context see Mark Francis, *Governors and Settlers: Images of Authority in the British Colonies, 1820-60* (London: Macmillan, 1992). Ready's progeny was destined to be even more distinguished than he was in colonial administration; his grandson was Viscount Milner (1854-1925), proconsul of South Africa.

76 Charles R. McQuaid, "Without Benefit of Clergy: The Colonial Chief Justices and the Temper of their Times," (unpubl. ms., [1987?]), 126. Hornby (*Black Islanders*, 8) seems to allude to this tradition: "With leadership from Lieutenant-Governor John Ready . . . ."

its second session, in October 1825, Ewen Cameron (1788-1831), high sheriff and member for Queens, introduced in the Assembly a bill to repeal the 1781 slave law: "An Act to repeal An Act made and passed in the 21st year of His late Majesty's Reign intituled [entitled] *An Act declaring that Baptism of Slaves shall not exempt them from Bondage*."[77] The bill passed quickly and quietly, apparently without any debate at all.[78] Who drafted the slave law repeal act? The likeliest candidate is William Johnston, newly reappointed attorney general, who had been a senior solicitor in Scotland's Court of Session before emigrating in 1812.[79] By 1825 Johnston was the recognized leader of the government in the Assembly. The slave law repeal enacted that year looks like a declaratory act, which affirms that slavery was and had always been illegal – no less in Prince Edward Island than in Scotland – and that the 1781 slave law was therefore unconstitutional. Within this interpretation, slave law repeal was Scotland's revenge as it was a reinstatement of the Scottish law of slavery as it stood in 1781 when the slave law was enacted.

Attorney General Johnston's involvement aside, why did an obsolete act regulating a class of personal property that no longer existed attract formal cancellation? Clearly more was involved than its superficially apparent purpose at the time of its enactment (slaves being the only form of personal property subject to statutory regulation). In his "Observations" on the bill for the colonial secretary, Ready remarked: "The preamble explains the reasons for passing this act."[80] Knowing no more of the history than what he read in the preamble, the new lieutenant-governor could hardly have said otherwise. The preamble, however, makes false and unsustainable historical claims. The 1781 slave law did not "sanction" and "permit" slavery; it simply responded to a perceived or anticipated socio-legal need by regulating slaves. Nor was it "at variance with the laws of England" or the "freedom of the country" at the time of its passage. It was, on the contrary, in full compliance with them. Legal qualms and long memories dictated that the slave law repeal act passed with a suspending clause, which meant it could not become law until confirmed by Whitehall.[81] It was referred to the committee of the Privy Council for Trade and Plantations and by them to

77 Statutes PEI 1825 (2nd), c. 7; *Acts of the General Assembly of Prince Edward Island Anno Sexto Regis Georgii IV. Second Session of the Twelfth General Assembly* (Charlottetown: King's Printer, 1825), 47-8, CO 226/42/209, UKNA. Bittermann (*Rural Protest*, 132) describes Cameron as one of the "key members of the mercantile and professional communities"; clearly he was a social progressive who supported, among other good causes, Catholic Emancipation.

78 No less an authority than the late Robin W. Winks grandiloquently styled it "British North America's most forthright nullification of slavery" (quoted in Hornby, *Black Islanders*, 9 and see also 12-13n23). Hornby unfairly criticizes Winks for not mentioning the act in *The Blacks in Canada*. The point is that Winks, astute historian that he was, rightly concluded that the act's supposed abolition of slavery was empty rhetoric. Though Prince Edward Island could not legally legislate against slavery even after it had ceased to be practiced, it could nevertheless remove an embarrassing relic of slavery's hegemony from its statute book.

79 See generally M. Brook Taylor, "Johnston, William," *DCB*, VI: 359-61.

80 CO 226/42/185, UKNA.

81 One senses here the fine hand of Samuel George William Archibald, KC, who was appointed chief justice of PEI and president of the Council in 1824. He stood at the head of the Nova Scotia bar and continued to live and work in Halifax.

counsel, James Stephen, who reported favourably.[82] The slave law repeal act was subsequently confirmed by Order in Council in November 1826.[83] The antislavery spirit of the age was in sync with a minor colony's apology for once legislating an ad hoc slave code. In theory, however, if no longer in fact, slavery still existed because it had not been abolished by an act of Parliament.

Slave law repeal was cosmetic and its impact nugatory. It made the ruling class feel better about themselves and the society they governed. Getting rid of the slave law long after slavery had disappeared posed no legal or social risk whatsoever, and did nothing to improve the lot of former slaves. By 1825 the British Atlantic world had changed. The old defunct and discredited slave law was the proverbial straw man – a relic of times past when the scope of property was significantly wider in one respect. Had slavery still existed in fact, repealing the slave law would have been much less straightforward. To paraphrase Chief Justice Strange of Nova Scotia (an English abolitionist) in the early 1790s, too much private property would have been thrown into the air all at once. Limiting the scope of private property was too hot for judges, much less legislatures, to touch. Slaveholders were instead invited to defend title warranty in court. Direct adjudication on the principal point – whether humans could be owned – was thus successfully avoided while the larger aim was achieved.

Slave law repeal did not abolish slavery because doing so would have undermined a sacrosanct legal right (the modern equivalent might be enacting a law that companion animals could henceforth not be privately owned). Moreover, slave law repeal did not abolish slavery because the slave law had not established or legalized slavery. Private property was a matter of common law, requiring no statutory embellishment. There was no need to retain an obsolete act regulating slaves when there were no longer any slaves to regulate; that species of private property was extinct. In any case, the enacting part of the bill was careful not to abolish slavery (the necessity of doing so appeared only in the preamble). The misconception that repealing an act regulating slaves meant abolishing slavery as a class of personalty was understandable given the tenor of the times. The 1781 slave law regulated an existing species of property; it did not invent slavery. The enactment of a slave law meant that slavery was up and running and working so well that regulation as to specifics was in the public interest. Slave law reflected and spoke to the prevailing social consensus.

82 James Stephen was an antislavery activist who went on to draft the Colonial Slavery Abolition Act. On his work as legal adviser to the Colonial Office, in which capacity he vetted all colonial legislation, see D.B. Swinfen, *Imperial Control of Colonial Legislation, 1813-1865: A Study of British Policy towards Colonial Legislative Powers* (Oxford: Clarendon Press, 1970) and Paul Knaplund, *James Stephen and the British Colonial System, 1813-1847* (Madison, WI: University of Wisconsin Press, 1952). For historical context, see Phillip Buckner, "The Colonial Office and British North America, 1801-1850," in *DCB*, VIII: xxiii-xxxvii. The authors would like to thank Buckner for determining that no report by Stephen on PEI's slave law repeal act exists among law officer reports in Colonial Office records.

83 Bathurst to Ready, 26 February 1827, enclosing Order in Council, 20 November 1826, CO 227/7/138, UKNA. On Bathurst's attitude towards colonial slavery, see N.D. McLachlan, "Bathurst at the Colonial Office, 1812-27: A Reconnaissance," *Historical Studies Australia and New Zealand* 13, no. 52 (April 1969): 485-8.

Slave law repeal suggests that the legislators of 1825 knew full well just how muscular the slave law was and how pervasively it had been enforced during slavery's hegemony. Despite its promoters' dream that slave law repeal be seen as a retrospective re-abolition of slavery, it was more about antislavery rhetoric and propaganda – appropriately enough since this was a time when slavery still existed in England and the West Indies and much of the United States. Just as the obsolete slave law operated as a convenient symbol of slavery's barbarism and oppression – an abuse of the otherwise respectable institution of private property – so too slave law repeal operated as a symbol of slavery's achieved destruction. Slave law repeal was a declaration of victory – a triumphant celebratory rewriting of fairly recent history. By 1825 the antislavery movement, which culminated in the Colonial Slavery Abolition Act (1833), was well underway. In 1823 the Society for the Mitigation and Gradual Abolition of Slavery was founded in England and the government, in which George Canning was foreign secretary and House of Commons leader, passed resolutions in Parliament instructing colonial governors on measures to ameliorate slavery where it still existed.[84] By 1825, moreover, the Colonial Office had been expanded and reorganized "principally in response to the anti-slavery campaign."[85] It therefore seems probable that Prince Edward Island's slave law repeal was a gesture of due diligence – complying, however symbolically, with the imperial initiative. Although it served no practical purpose, as propaganda it has flourished up to the present day and given rise to the myth that slavery in Prince Edward Island was abolished by local statute. Nothing could be further from the truth.

In 1825 no bill abolishing slavery in England much less the colonies had yet been enacted by Parliament nor did any colonial legislature ever enact such legislation. Had slavery still existed in Prince Edward Island, such a bill could not have been enacted. Had even one slave owner lost his property as a result of slave law repeal he could have sued for alienation or claimed compensation for expropriation or forfeiture. Slave law repeal was a morality play in which the 1781 slave law played exemplary villain, suffering in due course condign punishment. Slave law repeal provided retrospective recognition that civilized (that is, white) society did not countenance personal property in black people. Despite its rhetorical flourish, the preamble of the repeal act says nothing more than that the slave law was effective in its time – a time when slavery was a legally and socially accepted form of personal property. Slave law repeal signified not the end of slavery but the beginning of the antislavery movement: the campaign to abolish slavery elsewhere while it still existed.

84 On this subject generally, see Robin Blackburn, *The Overthrow of Colonial Slavery, 1776-1848* (New York and London: Verso, 1988).

85 Neville Thompson, "Bathurst, Henry, third Earl Bathurst (1762–1834)," *Oxford Dictionary of National Biography*, http://www.oxforddnb.com/view/article/1696. See also Neville Thompson, *Earl Bathurst and the British Empire* (Barnsley: Leo Cooper, 1999), 170-82; see, for example, Thompson's comments that "the campaign for the abolition of slavery . . . became the major reform issue of the 1820s" (170) and "nothing absorbed so much of Bathurst's time and effort in the years that he remained at the Colonial Office after 1823 as slavery" (182).

Appendix
Slaves on Prince Edward Island

Note: This list is representative rather than inclusive (much less exhaustive). It does not claim to include every known or knowable slave.

Slave names or identities:

1 Amelia Byers
2 John (Jack) Byers
3 Edward Byers (son of Amelia and Jack)
4 John Byers (son of Amelia and Jack)
5 William Byers (son of Amelia and Jack)
6 Jupiter Wise
7 Mingo
8 Ben
9 Peter
10 Peg
11 Guy
12 Joe
13 Thomas Williams
14 Dimbo Suckles
15 Ceasar
16 Susannah Schurman
17 Freelove Allen (?)
18 John Allen (?)
19 John Bass (?)
20 Polley
21 Simon
22 Catherine
23 Sam
24 David Sheppard
25 Slave of Edmund Fanning
26 Slave of Edmund Fanning
27 Slave of John Throckmorton
28 Slave of John Throckmorton
29 Slave of Samuel Hayden
30 Slave of Samuel Hayden
31 Slave of John Strickland
31 Slave of John Strickland
33 Sancho Campbell
34 Elizabeth Smallwood
35 Slave of Peter Anderson
36 Slave of Peter Anderson
37 Slave of Joseph Beers
38 Slave of Joseph Beers
39 Slave of Alexander Smith

40 Slave of Alexander Smith
41 Slave or Slaves of Mr. Hurd
42 Slave or Slaves of Colonel Compton
43 Slave or Slaves of John Clark
44 Slave or Slaves of Walter Berry
45 Slave or Slaves of David Higgins
46 Black Bill
47 Slave or Slaves of the Bovyer family