

Barrington Walker, A Dubious Legacy: African Canadians and the Law in Canadian History

In 1918, Fred Landon, a scholar of Black Canadian history in the age of the Underground Railroad argued British North Americans' treatment of Blacks, particularly its "coloured refugee settlements in western Ontario, was "a chapter of our provincial history that does us credit. To the Black men in bondage," wrote Landon "Canada was always the haven of refuge". Landon continued: "With the Fugitive Slave Law and other repressive measures in force, they were not safe, even in Boston. In some states supposedly free, they were subject to fierce persecution, but in Canada they always found protection and fullest freedom. They were given a welcome and an opportunity to show themselves

worthy of citizenship. Hundreds who made their escape from slave plantations in the South never halted until they had crossed the boundary and, to use their very own expressive phrase, "had shaken hands with the lion." Out of the free states of the North there came, too, a steady stream of coloured folk who had found their dreams of security and peace rudely disturbed by pro-slavery sentiment.¹

Blacks "dreams of security and peace", precisely the question of whether they found it under the British flag, is the question this piece addresses. This paper, a preliminary introductory chapter for a forthcoming Osgoode Society publication on Blacks and the law in Canada, interrogates Landon's portrayal of Canada as a place where fugitive slaves and both free blacks alike from the U.S. experienced the "fullest freedom" juxtaposed to the bondage of the South and the "supposed freedom" of the antebellum North. Landon's assumptions about Black life in Canada (as well as the tone and tenor of his text) interest me in this paper, for they are examples of the a priori assumptions that have shaped the writing of Black Canadian history generally and the treatment of Blacks under the law in particular.

Landon's vision of Black life at the end Underground Railroad on the British side, while not inaccurate in all its particulars, was certainly overdrawn. And while Landon had little to say about the eras that pre and post dated the age of the Underground Railroad, his body of work greatly influenced scholars' perceptions of Black Canadian life until the publication of Robin Winks' *The Blacks in Canada* in the 1970s. Contrary to Landon, Winks argued that Blacks faced serve cultural and socio-economic barriers but they were nonetheless equal before the law 'If social and economic realities did not conform to legislative and forms, these forms at least limited the ways in which prejudice might make itself felt.'²

What Winks' analysis missed is the law's ambivalent legacy in Canada for Black people. For while it surely did provide a check on overt expressions of racial animus towards Blacks at some conjunctures, all too often, both tacitly and overtly, the law was integral in supporting what I

¹ Fred Landon, "The History of The Wilberforce Refugee Colony in Middlesex County" in Karolyn Smardz Frost et al. eds., *Ontario's African-Canadian Heritage* (Toronto: Natural Heritage Books, 2009), 75

² Robin Winks, *The Blacks in Canada* (McGill-Queen's University Press, 1997), 248-252.

have elsewhere- drawing on Ian McKay's and Theo Goldberg's foundational work- called a racial liberal order that was teeming beneath with the tensions of biological racism. This was an order in which blacks were legal commodities and after 1833, under the veneer of neutrality and formalism, the law supported the conditions of their second class citizenship well into the modern civil rights era. I will explore these themes via a synopsis of the vast secondary literature on slavery and post emancipation Black life in Canada as well as some of the primary research I have conducted for my forthcoming book.

Louis XIV's formal recognition of slavery in New France, the relationship between slavery and property rights under British rule, the law's passive support for "Jim Crow" in Canada, and exclusionary immigration laws, are all aspects of Canada's racial state and point to the dubious legacy of the law for African descended peoples in the eras of slavery and freedom.