

Placing Slavery Within the Law

*[O]ne's sense of empowerment defines
one's relation to the law.*

–Patricia J. Williams

LEGAL SCHOLAR AND PROPONENT OF CRITICAL RACE THEORY

*Our university's founder, James McGill, envisioned a peaceful
society with a university at its heart. Acting on this vision 191
years ago, he left in his will, a parcel of land, to the Royal
Institution for the Advancement of Learning... to erect and
establish a University for the purposes of education and
advancement of learning in this province. We stand on his land.
We are the beneficiaries of his imagination.*

–Heather Munroe-Blum

FORMER PRINCIPAL, MCGILL UNIVERSITY

*To be truly transsystemic, the program must evolve to become
multilingual, multijurisdictional and multidisciplinary.*

–Roderick A. Macdonald

PROFESSOR, FACULTY OF LAW, MCGILL UNIVERSITY

In the Fall Term of 2016, a small group of students had the privilege to be enrolled in a pioneering course on Slavery and the Law offered at a Faculty of Law in Canada, designed and facilitated by Professor Adelle Blackett. We came to the class with a diversity of perspectives, backgrounds, and levels of familiarity with the institution of slavery and its legacies. However, none of us were prepared for what we were to learn about the foundational role that the law played in the creation and legitimization of the Trans-Atlantic slave trade, and perhaps more importantly, the deep-seated ways in which the slave industry has shaped and influenced the law. This insight was formative for many of us, as it allowed us to deconstruct and re-shape our understanding of the law in a way that rejected the dominant narrative of multiculturalism and legal neutrality, and better reflected our perspectives and lived experiences within the law. What follows are the final reflections of a small group of us on the value of teaching this class in a law faculty.

SAMANTHEA SAMUELS In Winter 2018, when I graduate from McGill Law, I will have three degrees from an institution named after a man who could have owned me. James McGill was a slave owner. Owning slaves and participating in the slave trade directly benefitted McGill's wealth and success, just like the unpaid labour of slaves directly contributed to the wealth of the city of Montreal. These facts are widely ignored, not only within my legal education at McGill University's Faculty of Law but also more generally in the Canadian context, signifying a widespread erasure of slavery and Black history. This course, Slavery and the Law, has legitimized my disdain for Canada's false-perception of itself as the "True North strong and free". This erasure that has plagued not only my life-long educational experiences, but also my existence as a Black woman, is a microcosm of the Canadian and Quebec attitude towards slavery.

"Je me souviens," a phrase tattooed on Quebec licence plates, seems to indicate that Quebec deems its history, especially as a francophone island in an Anglophone sea, as important. Yet the retelling of its history in educational settings and in popular culture does not mention nor reflect the slave trade that occurred on its soil. As an educational mammoth, it is dangerous for McGill not to acknowledge its dark history, and, more importantly, not to offer a program on anything relating to Black Canadian studies. What is even worse is the devastatingly low number of professors of colour employed by the vast institution, signifying McGill's lack of progression with respect to diversity, and its continued subconscious upholding of systemic oppression.

Throughout my legal education at this Faculty, I have constantly been burdened by a weight of oppression, whether it be induced by classmates in the corridors, racially insensitive discussions within classrooms or, more frequently, in the legal texts and materials that I am forced to read. Despite this, I have been able to carve out safe spaces to combat the lonely feeling of being one out of four Black students in my class of 180 through clubs such as the Black Law Students Association of McGill. The opportunity to critically engage with the law and subject matter through a historical lens of oppression has not only been truly enlightening, but has served as a healing process.

ALIAH EH-HOUNI I am by no means an expert in critical race or feminism, but I am often alarmed at the lack of familiarity with these subjects among my cohort here at McGill. Somehow an area of study that is the foundation of my interest in law, that informs all my decisions and all of my engagements, is viewed as peripheral and unnecessary by many of my classmates. While we happily engage in long conversations about adjacent issues such as democracy, civil liberties, and human rights, turning the conversation towards racial profiling or the absence of women of colour in the legal framework is met at best with silence and at worst with active resistance and shaming. This is not an equitable or productive environment. I believe in the capacity of my fellow students and I to work together to make change in the legal profession. The students with whom I have shared this class are among my closest friends, my present and my future colleagues with whom I hope to practice law with in new and innovative ways. While twenty-five potential partners is a blessing, it would be even better to have one hundred and eighty. The study of slavery and its legacies in the law should be mandatory learning for all law students. Only then will our faculty begin to create an equitable and “neutral” learning environment, as opposed to one that stifles the voices and ambitions of students who have lived with this legacy.

SIMONE AKYIANU Legal curricula has often reproduced and rationalized a skewed version of history, which maintains mythologies about the triumphs of legal liberalism and human rights law in eradicating North America’s ugly past of slavery and racial discrimination. Critical legal education has the potential to disrupt dominant ideologies and power relations in and outside of the legal academy. Education functions both as a tool of “colonization and [of] emancipation.” In its colonizing affinity, mainstream education tends “to assimilate and domesticate in the name of progress and prosperity and even in the name of equality and liberty.” This is made possible by including and omitting certain knowledge and perspectives from the substantive content of legal curriculum.

McGill University is not immune to this colonizing tendency. For instance, in my first year torts class, we were assigned to read *Parker v Richards*. I remember feeling disappointed by the lack of space given to critically interrogating the case in terms of the race, gender and class dynamics. I wondered: why was this tragic case

the first time I was being introduced to an Indigenous litigant? Why did we not deconstruct the racist assumptions underlying insurance law and tort victim “valuation”? After taking Slavery and the Law, the case took on new meaning for me as I became acutely aware of how entrenched the logic of slavery is in seemingly neutral legal instruments like contracts and insurance.

The critical scholarship on slavery, which was featured in our seminar, paints an intricate picture of the law’s historical and ongoing entanglement in racial subordination. Throughout the seminar we were asked to read the narratives of Black women and families whose stories are often neglected. It was not just that we learned about histories of oppression but that we were expected to identify the narratives of resistance about the law’s potential to constrain and inform individual choice, litigation for freedom, and broader social movements. With these teachings, I am reminded of the creative function of the law as a tool for social change. I am also conscious of the fact that my own learning, legal training and future practice has inevitably been shaped by compassion, collective work, and responsibility as a result of working through these narratives with my colleagues.

BRITTANY WILLIAMS In reading and discussing M. NourbeSe Philip’s Zong!, we encountered the notion of “speaking the unspeakable”. Within this book of legal poetry, we learn the story behind *Gregson v Gilbert*, an English case concerning the throwing of transported slaves overboard. This case was much more than just an insurance case. Captain Collingwood threw 121 slaves overboard over three days due to what is thought to have been for insurance collection.

The unspeakable in this case is the disposal of black bodies without consideration for their personhood. While we grappled with the horror of this act, we also considered that this case was not that much out of the ordinary for those times. This unspeakable case can be related to the way we treat legal cases in our pedagogy and the fact that we often disregard the people involved. The story of what happened on the Zong as well as many other stories that stemmed from such legal cases must be told. No matter the atrocities contained within them, we, as law students, must recognize and emphatically consider the individuals we know only by their last names in the titles of cases.

Much of the material we encountered in this seminar

was difficult to read, as the subject of slavery is a difficult history to contend with. Despite this, we read, discussed and considered the real-life implications of this global institution and how it has shaped current legislation. We should strive to include more discussion and education regarding the lasting social repercussions of different case decisions, laws and the like. It is through this practice that I believe we can become well-rounded jurists with holistic views of the law and its effects.

SHANTELE LAFAYETTE Law schools need to facilitate and encourage dialogue around diversity and inclusion, not shy away from potentially heated topics such as race. Law professors should strive to incorporate critical analysis of cases like *Gregson v Gilbert* into their pedagogy and to include conversations about legal violence and systemic racism towards people of colour (both in the past and in present) within the context of their classes. Understanding the way slavery shaped the relationships between law, public policy and social realities is an important first step in fostering racial equality in society and eliminating institutionalized racism. Educating future jurists about issues of systemic discrimination and implicit bias should be a top priority for law schools as it is likely to drive positive changes within the legal profession, including cultural sensitivity and awareness.

BAYA YANTREN Like a great number of North American universities, McGill University is born from the conquest of land, the robbery of goods, and the enslavement of people. Given the history of James McGill's wealth accumulation, teaching slavery as a genesis of the liberal legal tradition at the McGill Faculty of Law can be a small act of ideological reparation. With slavery as one of "Canada's best-kept secrets," teaching and learning slavery could be used to mobilize the proceeds of slavery to uncover its ideological and material legacies, and a first step in disabling their long-lasting harms.

Teaching and learning slavery is also essential to engaging in thorough legal scholarship, particularly with McGill partaking in the tradition of legal liberalism and positioning itself at the forefront of "transsystemia". Despite its claim to European traditions of legal scholarship as a Faculty, no course in legal history is offered as part of the BCL/LLB at McGill, with the history of both civil and common law relegated to quick introductions. Ignorance of histories

of legal thought makes it particularly difficult to understand legal genealogies and to approach law critically. The links between Roman law, the Code Noir, and the Code de l'indigénat should not be specialist knowledge. Learning and teaching slavery and the law means delving into legal history, demystifying narratives of 'original sin' and eschewing presentism in order to understand the legal genealogies in which the institution of slavery plays a central role: property law, labour law, contract, international law, and public law among others. There is no stronger historical basis for transsystemic legal education than the legal history of slavery, the murderous institution that has built the world that today requires the "multilingual, multijurisdictional and multidisciplinary" jurists described by Professor Roderick MacDonald.



THE SLAVE SHIP by J.M.W. TURNER (1840)

Inspired by an incident where the captain of the slave ship *Zong* ordered 133 slaves to be thrown overboard so that insurance payment could be collected.

Contours Volume V

MCGILL UNIVERSITY

Voix des femmes en droit

Voices of Women in Law