



“The Disorderly Conduct of a Few”: Crime and Hamilton’s Racial Geography in the Early 1850s¹

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Abstract

Drawing on a series of criminal cases that took place in Hamilton in late 1852, this paper explores the operation of race in law during the period against the backdrop of Hamilton’s geography. The paper sheds light on the living conditions of a segment of the population that has left scarcely a trace in the historical records. As well, a close examination of Hamilton’s census records and physical space reveals that those found guilty in these trials were linked to a particular racially and ethnically charged, vice-prone space rather than the more respectable central part of the city. The author argues that the construction of Prince’s Island, which lay in the marshes just west of Hamilton, as a “den of vice” probably conditioned the findings of guilt and innocence in one of the trials while promoting the impression that justice was “colour-blind.”

Keywords: race, crime, racialized geography, Hamilton, criminal justice, discrimination

Résumé

S’inspirant d’une série d’affaires pénales qui se sont déroulées à Hamilton à la fin de l’année 1852, ce document retrace la manière dont la race a agi en droit pénal pendant cette période en fonction du lieu de résidence dans cette ville. Elle met à jour les conditions de vie d’un segment de la population qui n’a guère laissé de trace dans les archives. Aussi, en examinant soigneusement les relevés de recensement et l’espace physique d’Hamilton, on constate que les personnes jugées coupables lors de ces procès étaient associées à un espace particulier, à caractère racial et ethnique et porté au vice, plutôt qu’à la partie centrale et plus respectable de la ville. L’auteur soutient que la construction de Prince’s Island, qui était une zone marécageuse située tout juste à l’ouest d’Hamilton et « source de vice », déterminait vraisemblablement les déclarations de culpabilité ou d’innocence dans ces procès tout en cultivant l’impression que la justice était « sans couleur ».

Mots clés : race, criminalité, géographie racisée, Hamilton, droit pénal, discrimination

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In the mid-1850s, abolitionist Benjamin Drew toured Canada West, interviewing individuals who had formerly been held in slavery in the United States. In a book published in 1856, Drew presented his interviews as a rebuttal to the pro-slavery propaganda emanating from the American South, which pronounced slavery to be a positive good for those held in bondage.² Drew's introductory remarks to his Hamilton interviews refer to the prevalent prejudice in that town. As scholars of African Canadian history have made abundantly clear, discrimination was a reality in Canada West, particularly around St. Catharines, Hamilton, London, and Chatham.³ Segregation in public schools was a contested issue in Hamilton and St. Catharines as well as elsewhere in the province.⁴ Contemporary observers described racist insults and discrimination in many contexts in the Canadas at mid-century. Concerns were expressed about the justice system's refusal to address offenses against people of African descent on the Niagara peninsula and about the failure by licensed public service providers—specifically inns and common carriers such as stagecoaches—to provide service to everyone, as they were required to do.⁵ Drew noted, though, that “[t]he commiseration felt for the colored population on account of their sufferings in the United States, seems to have been unduly modified by the disorderly

² George Elliott Clarke rightly cautions Canadian readers to not read Drew's text as proving that Canada was a paradise for people of African descent. Drew's audience was American: "Introduction: Let Us Now Consider 'African American' Narratives as (African-) Canadian Literature," in *The Refugee: Narratives of Fugitive Slaves in Canada*, by Benjamin Drew (Toronto: Dundurn Press, 2008 [1856]), 10–24.

³ By way of introduction to this literature, see Afua Cooper, "The Fluid Frontier: Blacks and the Detroit River Region: A Focus on Henry Bibb" (2000) 30(2) *Can. Rev. Amer. St.* 129; Karolyn Smarz Frost, "Communities of Resistance: African Canadians and African Americans in Antebellum Toronto" (2007) 99 *Ont. Hist.* 44; Sharon A. Hepburn, "Following the North Star: Canada as a Haven for Nineteenth-Century American Blacks" (1999) 25(2) *Mich. Hist. Rev.* 91; Jason H. Silverman, "The American Fugitive Slave in Canada: Myths and Realities" (1980) 19(3) *Southern St.* 215; Jason H. Silverman, "We Shall Be Heard! The Development of the Fugitive Slave Press in Canada" (1984) 65(1) *Can. Hist. Rev.* 54; Jason H. Silverman, *Unwelcome Guests: Canada West's Response to American Fugitive Slaves, 1800–1865* (Millwood, NY: Associated Faculty Press, 1985); Donald George Simpson, *Under the North Star: Black Communities in Upper Canada Before Confederation (1867)* (Trenton, NJ: African World Press, 2005); Barrington Walker, ed., *The History of Immigration and Racism in Canada* (Toronto: Canadian Scholars' Press, 2008); James W. St. G. Walker, "Race," *Rights and the Law in the Supreme Court of Canada: Historical Case Studies* (Waterloo, ON: Wilfrid Laurier Press for the Osgoode Society, 1997); Robin W. Winks, "A Sacred Animosity: Abolitionism in Canada," in Martin Duberman, ed., *The Antislavery Vanguard: New Essays on the Abolitionists* (Princeton, NJ: Princeton University Press, 1965); Robin W. Winks, "Negro School Segregation in Ontario and Nova Scotia" (1969) 50(2) *Can. Hist. Rev.* 164; Robin W. Winks, *The Blacks in Canada: A History* (New Haven, CT: Yale University Press, 1971).

⁴ See *Hutchison v. St. Catharines (Town) Board of Education* (1871), 1871 CarswellOnt 185, 31 U.C.Q.B. 274; Winks, "Negro School Segregation," *supra* note 3, at 171–72, 176; Simpson, *North Star*, *supra* note 3, at 241–48.

⁵ J. Walker, "Race," *Rights and the Law*, *supra*, note 3, at 122–81, esp. 144; Simpson, *North Star*, *supra* note 3, at 385–85, 392; Jacqueline L. Tobin with Hettie Jones, *From Midnight to Dawn: The Last Tracks of the Underground Railroad* (New York: Doubleday, 2007), at 164–65. Contemporary accounts may be found in Samuel Ringgold Ward to George Brown (Jul. 27, 1852), in C. Peter Ripley, *The Black Abolitionist Papers, Vol. 2: Canada, 1830–1865* (Chapel Hill: University of North Carolina Press, 1986), at 215–16; Peter Gallego to Thomas Rolph (Nov. 1, 1841), in Ripley, *ibid.*, 87; Samuel Ringgold Ward to Henry Bibb and James Theodore Holly (Oct. 1852), in Ripley, *ibid.*, 225; "Elevator," "Negrophobia on Canadian Steamboats," *Provincial Freeman*, Jun. 24, 1854; Valten [?] v. Babcock (Gore District, Sept. 1845) in benchbooks of Christopher Hagerman, Western Circuit, Autumn 1845, Archives of Ontario ["AO"], RG 22-390-3, box 40, file 2, 197–200.

conduct of a few among their number: still, the presence of 'a moral and religious element to restrain and elevate' is perceptible in Hamilton."⁶

In large part, this paper aims to add to our knowledge about race relations in Hamilton in the early 1850s by illuminating Drew's remark about "the disorderly conduct of a few," which I think referred to particular events. Perhaps the same "conduct" was on the mind of abolitionist Samuel Ringgold Ward when he observed, based on his own 1853 tour of Canada West, that "[s]ome foolish actions of our people have given occasion for some prejudice."⁷ In bringing to light "foolish actions" that I suspect were in the background for Drew and Ward, I do not mean to suggest that the discrimination so prevalent in Hamilton was the fault of those it targeted. The events I describe were anomalies, but they must have been difficult for abolitionists like Ward and Drew, since such events—as interpreted by their audiences—had the potential to interfere with the message of material, moral, and religious progress that Ward and Drew were so committed to propounding both locally and abroad.

My other goal in this essay is to examine the meaning that Hamilton's racial geography was given in the criminal courtroom and how it operated. I therefore begin by describing a small group of crimes committed by men of African descent in the summer of 1852. I describe the geography of Hamilton and where and how people of African descent lived. Finally, I argue that the meanings given to Hamilton's racialized space affected the outcome of one of the trials—a burglary case—even though all the cases show signs of a desire by legal personnel to maintain the appearance that justice was colour-blind and to avoid insinuating that blackness and criminality were linked outside of a particular place beyond Hamilton's boundaries. The point, I argue, was to present the offenses as "the disorderly conduct of a few." The result was a man of African descent being convicted of burglary on the thinnest of evidence, while a white man against whom there was somewhat more evidence went free. These trials, therefore, not only illuminate Ward's and Drew's remarks but also deepen our sense of the place that Hamilton was for people of African descent in the early 1850s. Unfortunately, the actual case files for 1852 appear not to have survived, so this paper relies on the judge's bench book, newspaper reports, census returns, local directories, jail records, and a remarkably detailed map of Hamilton.⁸ I aim to complement Adrienne Shadd's scholarship in her recent book, *The Journey from Tollgate to Parkway: African Canadians in Hamilton*.⁹

Race and Hamilton

A number of Canadian scholars have emphasized that understandings of places and spaces have contributed to constructions of race in Canada.¹⁰ Barrington

⁶ Drew, *Refugee*, *supra* note 2, at 124.

⁷ Report by Samuel Ringgold Ward (Mar. 24, 1853), in C. Peter Ripley, ed., *The Black Abolitionist Papers. Vol. 2: Canada, 1830–1865* (Chapel Hill and London: University of North Carolina Press, 1986) at 257.

⁸ Marcus Smith, *Map of the City of Hamilton in the County of Wentworth Canada West, 1850–1*, 2nd ed. (New York, N.: Ferd. Mayer's Lithography).

⁹ Toronto: Natural Heritage Books, 2010.

¹⁰ See the special issue of the *Canadian Journal of Law and Society*, edited by Sherene H. Razack: (2000) 15(2) CJLS/RCDS. Most of these essays and two others appear in Razack, ed., *Race, Space, and the Law: Unmapping a White Settler Society* (Toronto: Between the Lines, 2002).

Walker has observed that “[g]eographical space is yet another mark of difference through which groups experience the historical social process of racialization.” He argues that “we must think about space as something that is socially produced, both in a material sense (lower-class people live in slums as a result of class bias) and a symbolic sense (certain spaces come to represent people who are diseased, poor, filthy, dangerous, or prone to vice).”¹¹ Richard Thompson Ford has emphasized the role of legal and political decisions in creating racialized spaces.¹² Kay Anderson’s groundbreaking history of Vancouver’s Chinatown explores the discursive construction of that racialized space from the late nineteenth to the late twentieth century.¹³ Jennifer Nelson’s work on Halifax’s Africville has described the way that discourses linking poverty, race, space, and immorality were interwoven to create a justification for destroying that community in the 1960s.¹⁴ My argument here is that a discursive construction on a much smaller scale occurred in late 1852 through Hamilton’s newspapers and at the criminal assize: it linked a particular place with not only blackness but Irishness, alcohol, illicit sex, and vice in general. The purpose seems to have been to satisfy participants and the public that the criminal justice system was responding in a colour-blind way to vice and crime—which it was in part but not completely.

In January 1852, Hamilton’s population was just over 14,000.¹⁵ The size of its black community is somewhat uncertain owing to losses of parts of the 1851 census and other difficulties with the one taken ten years later.¹⁶ In Hamilton and other cities in Canada West, households self-reported their census data. We have therefore been left with what appear to be the understandings of race, religion, and so forth held by the household member who completed the return. Some forms are meticulously clear and others are not. As a result, my counts differ somewhat from those done by Adrienne Shadd and others. However, our counts are more than twice the one presented in the published report of the Hamilton census.¹⁷

Hamilton’s black population was distributed throughout the city but not evenly. By my count, 247 people were identified in the census as “coloured.” The three (of five) Hamilton wards with the fewest “coloured” people were St. Patrick’s, in the southeast part of the city, St. George’s in the southwest, and St. Mary’s in the

¹¹ B. Walker, *History of Immigration*, *supra* note 3, at 67.

¹² Richard Thompson Ford, “The Boundaries of Race: Political Geography in Legal Analysis” (1994) 107(8) *Harv. L. Rev.* 1841.

¹³ Kay J. Anderson, *Vancouver’s Chinatown: Racial Discourse in Canada, 1875–1980* (Montreal: McGill-Queen’s University Press, 1991).

¹⁴ Jennifer Nelson, “Panthers and Thieves: Racialized Knowledge and the Regulation of Africville” (2011) 45(1) *J. Can. St.* 121–42; Jennifer J. Nelson, *Razing Africville: A Geography of Racism* (Toronto: University of Toronto Press, 2008).

¹⁵ *Census of the Canadas, 1851–52: Agricultural Produce, Mills, Manufactories, Houses, Schools, Public Buildings, Places of Worship, &c.*, vol. 1 (Quebec: Lovell and Lamoureux, 1855).

¹⁶ See Michael Wayne’s analysis in “The Black Population of Canada West on the Eve of the American Civil War: A Reassessment Based on the Manuscript Census of 1861” (1995) 48(56) *Histoire Sociale / Social History* 465.

¹⁷ *Census of the Canadas, 1851–52*, *supra* note 15 (the figure given is 99). On the individual census returns available online through the Library and Archives Canada database (www.collections-canada.gc.ca), I counted 247: *Census of 1851 (Canada East, Canada West, New Brunswick, and Nova Scotia)*, Hamilton [hereinafter *Census of 1851*]. Shadd gives a figure of 244: *supra* note 9, at 127. The Hamilton Public Library’s compilation seems to yield a figure of 260: email from Margaret Houghton, archivist, July 25, 2011.

northwest.¹⁸ As far as I can tell from the census returns and a contemporary city directory, Hamilton had no specifically "coloured" neighbourhood.¹⁹ However, among those of African descent, a majority—about 140—probably lived in a narrow corridor about five blocks wide in the centre of Hamilton (between MacNab and Mary Streets) that ran north from King Street to Burlington Bay. This area encompassed St. Andrew's ward and part of St. Lawrence. The greater part of this strip was St. Andrew's, a long, thin ward about three blocks wide, bordered by the waterfront and MacNab, John, and King Streets. The surviving census records reveal 96 "coloured" people in St. Andrew's ward, which was 2.9 percent of the total reported population of 3,339; 4.8 percent of St. Andrew's households had "coloured" members (25 of 523). St. Lawrence ward lay east of St. Andrew's, in the northeast part of the city. Of St. Lawrence's total population of 3,386, 88 were "coloured" (2.5 percent), and 6.0 percent of households had "coloured" members (24 of 398).²⁰ Likely over one-third of St. Lawrence's black population lived in a two-block-wide stretch that ran along the eastern edge of St. Andrew's and across John Street.²¹

Churches and children seem likely to have been important markers of community. Like the churches of the other Christian denominations, the two "African" churches—Baptist and Methodist Episcopal—were centrally located, just north of the main commercial area, within the five-block-wide strip of St. Andrew's and St. Lawrence wards.²² Over two-thirds of Hamilton's "coloured" children (under age sixteen) lived in St. Andrew's and St. Lawrence wards. The area was not affluent, and few children attended school.²³ A few black households and lone individuals—fewer than fifty people in all—lived elsewhere in the city. A small, very poor

¹⁸ Sixteen of St. Patrick's total population of 3,128 (0.51 percent) were "coloured," and they lived in seven of the 557 households (1.3 percent). In St. George's, 25 of 2,223 people were identified as "coloured" (1.1 percent), and they lived in eight of 367 households (2.2 percent). In St. Mary's, 22 of 2,978 people were "coloured" (0.74 percent), and they lived in five of 488 households (1.0 percent). The overall population figures come from *Census of the Canadas, 1851–52*, vol. 1, *supra* note 15.

¹⁹ *City of Hamilton Directory: Containing a Full and Complete Street Directory* [etc.] (Hamilton: C.W. Cooke, 1853).

²⁰ *Census of 1851*, *supra* note 17, Hamilton, St. Andrew's and St. Lawrence.

²¹ This conclusion comes from my analysis of Benjamin Drew's numbers from his 1854 visit. His numbers accord well with the 1851 census for St. Patrick's, St. Mary's, and St. George's wards. His combined total of 191 for St. Andrew's and St. Lawrence is also highly plausible (I found 184 in 1851), but he significantly overstates the population of St. Andrew's (140) and understates St. Lawrence's (51): *supra* note 2, at 123. I suspect Drew misunderstood where the boundary lay between St. Lawrence and St. Andrew's wards. An enormous agricultural tract almost split St. Lawrence. Most of the ward lay to the east of it, but a two-block-wide strip of it ran along the farm's long western edge, between it and St. Andrew's. A visitor could easily have assumed that this part of St. Lawrence belonged to St. Andrew's. If Drew did so, then around 52 (140 minus 88) of those marked "coloured" in St. Lawrence lived in this area. About 140 of Hamilton's total population of 247 "coloured" people would therefore have lived in the narrow stretch north of King.

²² Thomas Hutchinson, *Hutchinson's Hamilton Directory, for 1862–63* [etc.] (Hamilton: John Eastwood & Co., c1863), at 207. The locations were the same in 1852: email from Margaret Houghton, archivist, Hamilton Public Library, May 30, 2011.

²³ Some census returns are unclear, but it seems that of the 86 or so people identified as "coloured" and under the age of 16 in Hamilton, 30 lived in St. Andrew's and about 33 lived in St. Lawrence: *Census of 1851*, *supra* note 17. The numbers in the other wards were very small: twelve "coloured" children lived in St. Mary's and St. George's, and 2 or 3 lived in St. Patrick's. Four "coloured" children in St. Andrew's and 6 in St. Lawrence attended school.

community also lived on “the Mountain,” a steep, thickly wooded part of the Niagara Escarpment on Hamilton’s southern edge.²⁴ Nearby Dundas was more prosperous and important than Hamilton, but it probably did not have a significant black community.²⁵

The road to Dundas ran—and still runs—generally westward from St. George’s and around a swampy area called Coote’s Paradise. Hidden in its depths, accessible from a spot near a toll booth on the road, lay a place known to the parties in this case as Prince’s Island, after Windsor Prince, a man of African descent, whose “island” it was said to be. I argue that, through the newspaper reports of the events described here and through the trials, the construction of Prince’s Island as a “den of vice” contributed in no small way to the conviction of one of the men for burglary and also distanced the black community at the city’s core from an association with criminality, in the interests of maintaining the appearance of colour-blindness.

The Burglaries

Around one o’clock in the morning on July 20, 1852, Oliver Dawsey, a twenty-eight-year-old man of African descent,²⁶ broke into the house of a rising young lawyer, Charles Sadleir, on King Street West in St. Mary’s ward, just west of central Hamilton.²⁷ Dawsey was accompanied by Jesse Tillason, also of African descent. According to Tillason, while he stood watch outside, Dawsey coolly and stealthily entered the house through a window. He drank some whiskey and, opening cabinets and containers, stole some bottles of ale, a piece of masonic regalia, a good deal of silver, some candles, and an overcoat.²⁸ Dawsey sorted the take in a nearby garden until the lawyer—roused by someone in his house—raised the alarm.

²⁴ Donald Simpson finds reference to this area in Jessie Beattie’s *John Christie Holland: Man of the Year* (1956): *North Star*, *supra* note 3, at 397, 430. Bill Freeman mentions a black community on Concession Street “on the mountain,” which seems most likely to be the same place: *Hamilton: A People’s History* (Toronto: James Lorimer, 2001), at 44–45. Simpson also mentions a school on the mountain that began as a mission: *North Star*, *supra* note 3, at 397. I found a total of 42 individuals identified as “coloured” living in 14 households in this area: *Census of 1851*, *supra* note 17, Wentworth, Barton.

²⁵ The individual census records for 1851–52 have not survived, but in the 1861 census, only 15 people out of a population of 2,852 were identified as “black” and none as “mulatto”: Barry Christopher Noonan, *Blacks in Canada, 1861* (Madison, WI: n.p., 2000) at 544. The published report of the 1851 census says there were 8 people identified as “coloured” in Dundas, out of a population of 3,517 (Dundas’s population fell in the next decade): *Census of the Canadas, 1851–52*, *supra* note 15.

²⁶ Gore-Hamilton Jail Register, 1850–57, AO, RG20-72-1. The records of the Hamilton jail disclose not only the charge, dates of committal and discharge, committing magistrate, and case outcome, but also the ages, birthplaces, level of literacy, drinking habits, marital status, conduct in jail, and number of previous jail committals for those who were housed in it. Unfortunately, they are silent on religion. In this paper, information about place of origin and age for the culprits and their friends comes from the jail register.

²⁷ “Burglary,” *Hamilton Gazette*, July 22, 1852; *Census of 1851*, *supra* note 17, Hamilton, St Mary’s, Schedule A, at 232; email from Paul Leatherdale, archivist, Law Society of Upper Canada [“LSUC”], September 1, 2010; *City of Hamilton Directory*, *supra* note 19, at 136.

²⁸ R. v. Oliver Dawsey (Hamilton criminal assize, fall 1852) in benchbooks of Robert Baldwin Sullivan, Oxford Circuit, Autumn 1852, Common Pleas and Criminal Cases, AO, RG22-390-5, box 45, file 4, 146–56 at 146–52 [“R. v. Dawsey”]; R. v. Oliver Dawsey, Thomas Cavill, Jesse Tillason and Joseph Butler (Hamilton criminal assize, fall 1852) in benchbooks of Robert Baldwin Sullivan, Oxford Circuit, Autumn 1852, Common Pleas and Criminal Cases, AO, RG22-390-5, box 45, file 4, 157–70 at 159 [“R. v. Dawsey et al.”].

Dawsey and Tillason took off for a secluded spot just outside Hamilton's western boundaries, about a mile off the road to nearby Dundas.²⁹ The place was called Prince's Island by those who knew of it, although it was probably just hard ground in a marshy area (no boats were ever mentioned). A man of African descent named Windsor Prince kept a "shanty" there, where an assortment of people gathered who were involved in various ways in succeeding events.³⁰

Other burglaries followed. Two weeks later, the *Hamilton Weekly Spectator* reported that on the night of August 3, a Dundas hotel had been broken into and money taken. The burglars—the writer thought there were three or four—had raised a side sash and opened the front door before being surprised by a resident.³¹ Next, on Monday, August 16, a tin shop on Hamilton's James Street—probably within five blocks of Charles Sadleir's house³²—was entered through the back window. The thieves took only "some \$3 or \$4 in coppers."³³ Two days later, on Wednesday, August 18, a Hamilton hardware store on King Street (about four blocks east of Sadleir's house) was broken into during the night and despoiled of "ivory-set cutlery, and plated spoons," along with some coins. The *Hamilton Gazette* remarked that other burglaries had been reported, and that "a regular gang of . . . rascals" seemed to be haunting the city.³⁴ Burglaries had also taken place around the same time period in the village of Wellington Square, a bit farther north on Lake Ontario and now part of Burlington, but whether or not they were connected to these events is unknown.³⁵ Prince's Island lay more or less equidistant from the Hamilton and Dundas burglaries.

The Last Burglary

Early in the morning on Friday, August 20, yet another break-in took place, at the house of William Notman in Dundas.³⁶ Notman was a Scottish-born lawyer and ex-member of the legislative assembly.³⁷ Having ignored his barking dog in the middle of the night, he was awakened by a police officer in the early hours of the morning to be told that he had been robbed (how the officer knew is unclear). Entrance had been made through a window off the pantry in the dining room, and two sets of footprints had been left on a newly painted windowsill. The room had been turned upside down, and a good deal of silver had been taken.³⁸

²⁹ R. v. Dawsey, *supra* note 28, at 151–52.

³⁰ "Dreadful Murder," *Hamilton Gazette*, Aug. 30, 1852. I did not find Windsor Prince in the Census of 1851.

³¹ "Burglary in Dundas," *Weekly Spectator*, August 5, 1852.

³² The intersection of King and James was the centre of Hamilton for the purposes of address numbering. Sadleir lived about three blocks west of this intersection on the corner of King and Bowery/Bay. Sylvester's tin shop appears to have been just over a block north of the King/James intersection: email from Margaret Houghton, archivist, Hamilton Public Library, June 2, 2010; *City of Hamilton Directory*, *supra* note 19, at 12, 32, 42, 136.

³³ "Robbery," *Weekly Spectator*, August 19, 1852.

³⁴ "Another Burglary," *Hamilton Gazette*, August 23, 1852. J. Carpenter's hardware store was on King Street, just east of Hughson: *City of Hamilton Directory*, *supra* note 19, at 39.

³⁵ "Robbery at Wellington Square," *Weekly Spectator*, September 10, 1852.

³⁶ R. v. Dawsey et al., *supra* note 28, at 156–70.

³⁷ T. Roy Woodhouse, *History of the Town of Dundas* (Dundas, Ont.: Dundas Historical Society, 1965), at 33; Henry J. Morgan, *The Canadian Parliamentary Companion: First Year* (Quebec: Desbarats & Derbshire, [1862]), at 35. Notman's house, at 32 Cross Street, still stands.

³⁸ R. v. Dawsey et al., *supra* note 28, at 157–58.

On the night of Notman's burglary, Oliver Dawsey left Prince's Island, accompanied by Jesse Tillason and a third man of African descent, twenty-six-year-old Joseph Butler. A fourth man joined them.³⁹ He was likely Thomas Cavill, a white man born in England, in whose house in central Hamilton (about a block from Carpenter's hardware store) Dawsey had recently taken up residence.⁴⁰ The burglary took place, the fourth man departed, and the other three returned to Prince's Island. Dawsey and Tillason spoke of their successful "raise." Apparently feeling unwell, and keeping Sadleir's overcoat, Tillason went off to his mother's house in Burford.⁴¹ Dawsey spent Sunday in the bush, melting down the silver in a solution he was heating in a tree stump.⁴²

On Monday, August 23, Dawsey and Cavill left Hamilton, taking the stage and the ferry to St. Catharines, where they hawked the silver lumps. Upon their return to Hamilton they were arrested, probably because of William Notman's investigative efforts. Taking along two constables, Notman went to Tillason's mother's house. Tillason was caught as he tried to flee. His mother "began to upbraid him with his conduct," but he said, "Give up Mother and in God's name let the men have the things." His mother turned over a substantial amount of silver to Notman and the police, but none of it was Notman's. They returned to Dundas, and Tillason probably did some talking on the way, leading suspicions toward Dawsey and Cavill.⁴³

Murder

While Dawsey and Cavill were making their way to St. Catharines, two young white brickmakers, William Edgar and Hugh Kenny, also visited Prince's Island, with disastrous results.⁴⁴ They had started the day with alcohol at Simeon Cline's inn on the Dundas-Hamilton road on the western edge of town,⁴⁵ and they were probably looking for more alcohol, women, and perhaps the revival of an earlier quarrel.⁴⁶ Some time passed; words—probably racially charged—were exchanged; and suddenly, while Kenny's and Edgar's backs were turned, Joseph Butler and George Foreman, age twenty-two and of African descent, charged them, running out from behind the house. Butler hit Kenny with what was probably a stone in a bag; Kenny blacked out and fell. Foreman struck Edgar with the blade of a heavy shovel; Edgar crumpled, his skull fractured in several places. Kenny regained consciousness, but Edgar died two days later.⁴⁷

³⁹ Ibid. at 162.

⁴⁰ The general location of Cavill's house can be gleaned from witness testimony: *R. v. Dawsey et al.*, *supra* note 28, at 169. Cavill's name does not appear on the map of Hamilton, in the 1853 Hamilton directory, or among the individual census returns.

⁴¹ *R. v. Dawsey et al.*, *supra* note 28, at 160–62.

⁴² Ibid. at 164.

⁴³ Ibid. at 158–60.

⁴⁴ "Murder," [Hamilton] *Weekly Spectator*, September 2, 1852; "Dreadful Murder," *supra* note 30; *R. v. George Foreman and Joseph Butler* (Hamilton criminal assize, fall 1852) in benchbooks of Robert Baldwin Sullivan, Oxford Circuit, autumn 1852, Common Pleas and Criminal Cases, AO, RG22-390-5, box 45, file 4, 157–70 at 172 ["*R. v. Foreman and Butler*"].

⁴⁵ *R. v. Foreman and Butler*, *supra* note 44; "The Queen vs. George Foreman and Joseph Butler—Murder," [Hamilton] *Weekly Spectator*, November 4, 1852.

⁴⁶ *R. v. Foreman and Butler*, *supra* note 44, at 172–74.

⁴⁷ Ibid. at 172–83.

After the attack, Foreman took off into the bush with his Irish-born girlfriend, Ellen Cooper, and Mary Ashby, sometimes called Burns, who was also Irish-born. She was Tillason's girlfriend. Butler remained at Prince's Island for a while with two other women, Jenny Russell and one Mary Boyle (Russell, who was also Irish, had "got with" Oliver Dawsey when he lived at Prince's Island for two weeks in August⁴⁸). Around sunset a wagon came along, its driver gathering firewood. When Mary Boyle raised the alarm, Butler fled. Russell and Boyle helped load Edgar, who was unconscious, and Kenny, who could walk with help, into the wagon. They were sent off, Edgar to the place where he boarded (likely his employer's), and Kenny to the home of the wagon's owner near Prince's Island.⁴⁹

Foreman, Cooper, and Ashby paused briefly during their flight to steal some clothes. They were then arrested and charged with larceny. The next day, Butler and Dawsey were apprehended and charged with assault and burglary, respectively. Over the next few weeks, Tillason and Cavill were arrested and charged with burglary, and all were jailed to await trial at the assize that began in late October. A coroner's inquest was held, and the charges against Butler and Foreman were changed to murder.⁵⁰

The Den of Thieves

The arrests and committals for burglary and larceny attracted no newspaper attention, but the murder was big news. Jennifer Nelson has described how race and poverty intertwined with social understandings of immorality and criminality to render Halifax's Africville a slum, a problem whose solution, in the eyes of Halifax's urban planners and policymakers, could only be destruction.⁵¹ Nelson observes that this logic emerged through a discursive process over time.⁵² What took place in Hamilton in the fall of 1852 was a related process, although it resulted not in the discursive creation of a slum but in a small, hidden "den of vice." This "den," Prince's Island, was suddenly brought out into the light in the newspapers' reports of the inquest. The *Hamilton Gazette's* report began,

A sad and painful office is ours this day, for we . . . have to record a most diabolical deed which was committed this day week, at a place called Prince Edward's Island [*sic*], in Cooté's Paradise, near this city. It would appear that in this misnomered place there resides an aged colored man named Prince, whose shanty is a den of infamy, where the most wretched and abandoned creatures of both sexes are wont to assemble. Into this place, on Monday afternoon, two white men, named William Edgar and Hugh Kenny, entered, when some jostling took place between them and two colored men Joseph Butler and George Foreman, with whom they had had some previous disagreement. In a short time, however, the two colored men retired, but only that they might return to gratify their fiendish desires.

⁴⁸ R. v. Dawsey, *supra* note 28, at 149–50.

⁴⁹ R. v. Foreman and Butler, *supra* note 44, at 176–80; *Census of 1851*, *supra* note 17, Hamilton, St. George's, Schedule A, at 109 (for the brickmaking establishment).

⁵⁰ Jail Register, *supra* note 26; "Murder," *supra* note 44; "Dreadful Murder," *supra* note 30; "Assize Intelligence," [Hamilton] *Weekly Spectator*, October 21, 1852; "The Queen vs. George Foreman and Joseph Butler—Murder," *supra* note 45.

⁵¹ Nelson, "Panthers and Thieves" and *Razing Africville*, *supra* note 14.

⁵² Nelson, "Panthers and Thieves," *supra* note 14, at 125.

The newspaper described the attack, embellishing the account with violent details that were not borne out by the evidence subsequently adduced at trial. If the coroner was told of the care Edgar and Kenny received, those details were omitted.⁵³

The *Hamilton Weekly Spectator's* account began,

An aged and decrepid [*sic*] colored man, named Prince, lives in a log house, on the further side of the Marsh, about a mile west of the city, where the most abandoned of both sexes are in the habit of congregating. On Monday afternoon, two brick-makers, named William Edgar and Hugh Kenny, went over to this den . . .

The *Spectator* embellished less than the *Gazette* did, but it, too, disregarded any evidence that may have been adduced of efforts to ease Edgar's suffering and to get help.⁵⁴

The newspapers identified no other "associations," either spatial or personal, for any of the individuals mentioned. Edgar boarded with a brickmaker in the western reaches of town, and likely he and Hugh Kenny worked there as well.⁵⁵ Kenny could well have been the son of H. L. and Jane Kenny, who had an inn in St. Mary's Ward, close to Sadleir's house and the brickmaking establishment.⁵⁶ They employed a young woman named Mary Burns, who may have been the same person as Mary Ashby.⁵⁷ No connections, however, were mentioned for Edgar or Kenny, probably not because they were unknown (after all, Edgar had died at his employer's), but to spare the connections embarrassment. Edgar and Kenny, like Butler and Foreman, simply appeared on Prince's Island.

Space, Race, and Guilt in the Burglary Cases

Richard Thompson Ford observes that, although we tend to suppose that cities develop naturally and are then "discovered" by the law, spatiality in fact reflects the workings of power and ideology.⁵⁸ Ford says that "[s]pace, as we experience it, is in many ways the product, and not the fixed context, of social interactions, ideological conceptions, and of course, legal doctrine and public policy."⁵⁹ The construction of the space of Prince's Island as a "den of vice"—beyond the legal and social boundaries of Hamilton—continued in the trials that followed, although only the murder trial was reported in the newspapers. Crown counsel explored the various witnesses' familiarity with Prince's Island: when they had been there, and

⁵³ "Dreadful Murder," *supra* note 30.

⁵⁴ "Murder," *supra* note 44.

⁵⁵ The brickmaking business was on the western outskirts of town. It was about halfway between Simeon Cline's inn (*supra* note 45) and downtown Hamilton: *Census of 1851*, *supra* note 17, Hamilton, St. George's, Schedule A, at 109.

⁵⁶ *Census of 1851*, *supra* note 17, Hamilton, St. Mary's, Schedule A, at 198. See "Murder," *supra* note 44; R. v. Foreman and Butler, *supra* note 44, at 180; *City of Hamilton Directory*, *supra*, note 19, at 43, 51, 111.

⁵⁷ Most of the participants in these events do not appear in the census, so one should not assume that Mary Ashby/Burns would either. The coincidence of names is interesting, though, and at the least, she was not in jail at the time of the census. The census record says she was sixteen and the jail register says she was twenty, but inaccuracies in either are possible.

⁵⁸ Ford, "The Boundaries of Race," *supra* note 12, at 1858.

⁵⁹ *Ibid.* at 1859.

their observations of arrivals, departures, the melting of silver, and the hiding of tools. The evidence against Oliver Dawsey in the Sadleir burglary prosecution was extremely incriminating. In the Notman burglary case, the evidence against Dawsey and Tillason was compelling. George Foreman presented Dawsey as the ringleader, who proposed to Tillason that they "take a walk" and "make a raise" in Dundas, and after they returned, commented that "if it had not been for a damned dog they would have had a better raise." According to Foreman, Tillason added that "they had had a good raise for one night." As for Butler, though, Foreman testified simply that he had been around, would have heard these comments, and had left and returned with the others. Jenny Russell provided similar testimony.⁶⁰ The evidence against Butler, therefore, placed him on Prince's Island, coming and going with Dawsey and Tillason but saying nothing, carrying nothing, and doing nothing that placed him at Notman's house. Nevertheless, he was convicted of burglary.

The evidence against the white man, Thomas Cavill, was different. Neither Foreman nor Russell knew of Cavill—Foreman referred only to hearing of someone who ran away when the dog barked. There was no evidence of any association with Prince's Island. There were other signs of guilt, though: a suspicious dog bite on Cavill's leg, a boot print on a windowsill, and Cavill's associations with Dawsey, especially his standing watch while Dawsey fenced the silver in St. Catharines.⁶¹ Cavill was acquitted.

I do not think any of the men accused of Notman's burglary had a lawyer. There were no defence witnesses, and there was only one—ineffective—cross-examination in the whole trial.⁶² Exactly how the judge charged the jury is unclear. His notes indicate that he explained the elements of burglary and that he read the evidence and remarked on something else—but what that was is unfortunately illegible. He told the jury that they could find the prisoners guilty of larceny, and that Oliver Dawsey's guilty plea was not to be used to incriminate the others.⁶³ Perhaps Butler might have escaped if he had had effective defence counsel; as it was, the conclusion seems inescapable that he was convicted because he was with Dawsey and Tillason on Prince's Island. He was, of course, "coloured," and blackness combined with liquor, Irishness, idleness, and illicit sex to make Prince's Island entirely disreputable. Cavill was white and English by birth and had never been seen on Prince's Island. He was acquitted, even though there was more evidence against him.

The Murder Trial and Hamilton's Racial Geography

Race is ambiguous in the records of the murder trial, as if it was important but not allowed to play too significant a role. George Foreman was convicted of murder

⁶⁰ R. v. Dawsey et al., *supra* note 28 at 160–65, quotations at 162.

⁶¹ *Ibid.* at 159–69.

⁶² *Ibid.* at 160. The presence of defence witnesses and reasonably extensive cross-examinations in Dawsey's trial for the Sadleir burglary suggest that he had counsel. I describe the proceedings in more depth in "Race and the Criminal Justice System in Canada West: Burglary and Murder in Hamilton, 1852–53" (2012) 37(2) *Queen's L.J.* 477–522.

⁶³ R. v. Dawsey et al., *supra* note 28, at 169–70.

not because he was black but because the evidence was overwhelming that the shovel blade he had wielded had shattered Edgar's skull. None of the evidence suggested that the blow had been struck in the midst of a skirmish, as the attack appeared to have been planned behind Prince's shanty. With a better lawyer, Joseph Butler might possibly have escaped a murder conviction, but the verdict was not manifestly wrong. He was charged with being a principal "in the second degree," meaning that he was "present aiding and abetting at the commission of the fact."⁶⁴ Perhaps a better lawyer could have persuaded a jury—or an appellate court—that Butler had not been engaged in a common enterprise with Foreman because Butler (unlike the principals in the earlier cases on the subject) had been engaged in attacking Kenny, rather than Edgar, at the time. Defence counsel did object that there was no evidence that Butler had assisted Foreman in striking Edgar, but the judge overruled the objection, presumably because actually assisting was not a necessary element of the crime of being a murder principal in the second degree.⁶⁵ The convictions in the murder case were defensible on legal and evidentiary grounds.

I think, though, that race was present in two ways. First, justice was to be seen to be colour-blind. Second—and related to the first—the racialized moral taint that clung to Prince's Island was not to be allowed to spread eastward to taint other people of African descent who lived in the centre of Hamilton.

A commitment to being seen as impartial and unswayed by racializing habits of mind seems present in Justice Robert Baldwin Sullivan's notes and perhaps, also, in the remarks of Samuel Black Freeman, who conducted the case for the Crown. Opening the assize, Sullivan noted the murders and burglaries on the docket but attributed them to rapid population growth rather than, say, immigration or race.⁶⁶ Freeman opened the murder trial by denying any desire to create a feeling of prejudice against the accused.⁶⁷ He could of course have said the same of anyone on trial, and indeed he did make a similar remark in another trial at that assize.⁶⁸ Justice Sullivan was inconsistent in his ascriptions of racial categories in the notes he took on the cases. No note of race appears in the notes for Dawsey's prosecution for the Sadleir burglary. In the second burglary case, at Notman's, Sullivan made

⁶⁴ John Jervis, *Archbold's Summary of the Law Relative to Pleading and Evidence in Criminal Cases*, 9th ed. (London: S Sweet, V & R Stevens & GS Norton, 1843), at 4–6. Sullivan's notes for his charge to the jury state, "But if there were no assault to mitigate Foreman's act and if the prisoner Butler returned with him, and both came around to commit an assault upon the deceased and his companion, and the deceased were killed by one, the other would be guilty of murder in the second degree": R. v. Foreman and Butler, *supra* note 44, at 85. An 1865 Upper Canadian magistrates' manual stated the law similarly: John McNab, *The Magistrates' Manual* [etc.] (Toronto: WC Chewett & Co, 1865), at 387. Butler was in fact not even charged for the assault on Kenny: Jail Register, *supra* note 26.

⁶⁵ Exactly who represented Butler is somewhat unclear. Justice Sullivan's notes refer to Read making this objection "as counsel for the prisoners": R. v. Foreman and Butler, *supra* note 44, at 182. A newspaper noted, "Mr. D.B. Read appeared for Foreman, and M. Martin for Butler": "The Queen vs. George Foreman and Joseph Butler—Murder," *supra* note 45. However, although David Breakenridge Read appears on the rolls of the Law Society of Upper Canada, M. Martin does not: email from Paul Leatherdale, Archivist, Law Society of Upper Canada, 3 August 2011.

⁶⁶ "Assize Intelligence," *supra* note 50.

⁶⁷ "The Queen vs. George Foreman and Joseph Butler—Murder," *supra* note 45.

⁶⁸ "The Queen vs. John Tipple—Murder," [Hamilton] *Weekly Spectator*, November 4, 1852.

small notes of "coloured" and "white" perpendicular to the names of the four accused men in the style of cause, as if he were trying to keep them straight in his mind and notes. In the murder trial, though, right beneath the charges, Sullivan wrote, "The prisoners are both colored men."⁶⁹ Perhaps the information in the stark statement would have been relevant for an appeal or a commutation application.

As for the witnesses, Sullivan identified Windsor Prince as "a negro" in his notes on the murder trial, but two other witnesses of African descent, Benjamin Harris and Peter Price, went unlabeled.⁷⁰ Such ascriptions and elisions are hard to interpret. The "aged and decrepid [sic]" Windsor Prince, who owned the shanty at Prince's Island, would certainly have been seen as entirely disreputable.⁷¹ The label "a negro" may have underlined this assessment: Eve Darian-Smith has argued that by the early 1850s, assertions of black inferiority were being grounded in a pseudo-scientific discourse about the biology of "the negro."⁷² "Coloured" was the purportedly neutral term, and the one most often used. Sullivan's notes, therefore, seem to note race for particular purposes such as distinguishing Prince from the witnesses of African descent, whose credibility was not at issue, and perhaps, in the case of Butler and Foreman, for preparing the record for later legal developments. Bias, if present, is hard to conclusively identify, because the record is almost completely silent: colour-blindness was to be demonstrated in this high-profile trial.

Something else was going on, though. Prince's Island had been presented in the newspapers as a shocking, previously unknown site of vice just beyond Hamilton's boundaries. Most of the participants in the murder trial had probably appeared in court only a day or two before in the burglary trials; Sullivan's benchbooks contain his notes on the Sadleir case, followed immediately by the Notman case, a very short, unrelated larceny case, and then the murder case. Since no records of who sat on the trial jury appear to have survived, it is unclear whether jurors heard more than one of these cases, but the process of choosing the 36 jurors for the three trials—by ballot, from a pool that would have contained as few as 72 and as many as 144 names—makes it extremely likely that at least some did.⁷³

Ellen Cooper and Mary Ashby had been convicted of larceny earlier in the assize term, for the clothes they stole when they and George Foreman fled after the murder.⁷⁴ Some of the jurors in the later trials may have recognized them. Jesse

⁶⁹ R. v. Dawsey, *supra* note 28; R. v. Dawsey et al., *supra* note 28, at 157; R. v. Foreman and Butler, *supra* note 44, at 172.

⁷⁰ R. v. Dawsey et al., *supra* note 28, at 169; R. v. Foreman and Butler, *supra* note 44, at 174.

⁷¹ "Murder," *supra* note 44.

⁷² Eve Darian-Smith, *Religion, Race, Rights: Landmarks in the History of Modern Anglo-American Law* (Oxford: Hart Publishing, 2010), at 131–44. The reports of Oliver Dawsey's later escape from jail echo this practice: a report that simply announced his escape and the reward being offered called him "a negro," but a more admiring report labeled him with the more neutral-sounding term "a colored man": "Escaped Convict" *Hamilton Weekly Spectator*, November 10, 1853; "Extraordinary Industry!" *Dundas Warder*, November 11, 1853.

⁷³ *An Act for the Consolidation and Amendment of the Laws Relative to Jurors, Juries and Inquests in that Part of this Province called Upper Canada*, S Prov C 1850 (13 & 14 Vic), c 55, ss. 36–38. Also, after a case, the names were to be returned to the ballot box, but if there were no objections "on the part of the Queen, or any other party" (s. 38), all or part of the jury could be retained for the next case.

⁷⁴ R. v. Ellen Cooper and Mary Ashby (Hamilton criminal assize, fall 1852) in benchbooks of Robert Baldwin Sullivan, Oxford Circuit, Autumn 1852, Common Pleas and Criminal Cases, AO, RG22-390-5, box 45, file 4, 89–90.

Tillason, Ellen Cooper, Mary Ashby, and Joseph Butler testified in the Sadleir burglary case. Tillason testified about meeting Dawsey and Foreman and going to Prince's Island, where he saw Dawsey with money, tools, and keys. Dawsey melted down spoons at Prince's Island.⁷⁵ Ellen Cooper and Mary Ashby admitted their familiarity with Dawsey and Prince's Island and described Dawsey's doings there and Cooper's involvement in acquiring the solvent he needed to melt down the silver.⁷⁶ Butler, too, disclosed what he had seen on Prince's Island.⁷⁷

The linking of the culprits and their friends to Prince's Island continued in the Notman burglary case—indeed, this association appears to have been the reason for Butler's conviction. George Foreman testified about the comings and goings of Dawsey, Tillason, and Butler, about a carpetbag that Dawsey forbade anyone to touch, about getting liquor, and about melting down silver.⁷⁸ Jenny Russell testified similarly.⁷⁹ The rest of the testimony concerned the burglary itself, the rounding up of the various culprits, the recovery of a certain silver tray, and the trip Dawsey and Cavill made to St. Catharines.

The focus on Prince's Island intensified during the murder trial, since it was the site of the attack. Witnesses were asked if they knew of Prince's Island and whether, or how often, they had visited it before the fateful day. Sometimes there was disagreement on this point: Hugh Kenny, the Crown's lead witness, testified that he knew of "a place called Princes Island about a mile from the toll gate near Hamilton" but on cross-examination he denied having visited it before the day of the attack. He added, "The girls are of bad character. The place was one of general resort." (He admitted, though, that he and Edgar had gone partly to see "the girls.")⁸⁰ Windsor Prince, however, suggested that although this had been Edgar's first visit to the Island, Kenny had been there earlier in August.⁸¹ Mary Boyle's and Jenny Russell's accounts echoed Prince's in this respect.⁸²

Prince's Island emerged as a whiskey-soaked site of idleness and fornication, much of it interracial. There was a lot of testimony about how drunk Kenny, Edgar, Foreman, and Butler were. The women were asked about their own drinking and how much time they spent on Prince's Island: Mary Boyle was there occasionally, but Jenny Russell and Ellen Cooper were there most of the time.⁸³ Cooper testified about racially charged cursing and threats.⁸⁴ Prince's Island bore a potent combination of markers of vice: Irish women, fornication, idleness, fighting language, and whiskey. Defence counsel emphasized these vices in order to discredit the prosecution's evidence,⁸⁵ but this strategy must have had the effect of depicting

⁷⁵ R. v. Dawsey, *supra* note 28, at 148–52.

⁷⁶ *Ibid.* at 153–54.

⁷⁷ *Ibid.* at 155.

⁷⁸ R. v. Dawsey et al., *supra* note 28, at 160–62.

⁷⁹ *Ibid.* at 163–65.

⁸⁰ R. v. Foreman and Butler, *supra* note 44, at 172–73.

⁸¹ *Ibid.* at 174.

⁸² *Ibid.* at 177, 180.

⁸³ *Ibid.* at 178, 180, 182–83. Russell and Cooper spent a great deal of 1852 in jail for drinking and disorderly conduct, and Ashby did time as well: Jail Register, *supra* note 26.

⁸⁴ Kenny did not recall saying, "You damned black niggers why are you here with white women?" R. v. Foreman and Butler, *supra* note 44, at 174, 182–83.

⁸⁵ "The Queen vs. George Foreman and Joseph Butler—Murder," *supra* note 45.

anyone associated with Prince's Island as morally beyond the pale. On balance, I do not think it resulted in a wrongful conviction, even of Butler, but it had another effect: deliberately or not, it discouraged the jury and the newspaper audience from drawing the conclusion that it was simply blackness that produced vice.

I have noted that the newspapers mentioned no familial or other connections for Edgar or Kenny in their initial reports of the death, even though both probably had some. No connections to Hamilton emerged for the men of African descent or the Irish women, either, unless one counts Oliver Dawsey's residence in Thomas Cavill's house for a couple of weeks.⁸⁶ The women likewise were asked about their connection to Prince's Island but not to Hamilton or Dundas. However, Thomas Cavill, who was acquitted, had a house in Hamilton but was unknown on Prince's Island.

At least two other men of African descent testified in the trial regarding the burglary at Notman's: Benjamin Harris and Peter Price. Justice Sullivan made no note of race for them. Only one witness testified after them, and I have been unable to find anything about him—he may have been of African descent, too—so perhaps Sullivan knew he would remember their blackness without making a note of it. They played only small parts in the drama, and they had no association with Prince's Island.

Peter Price was the cab driver who took Dawsey and Cavill to the St. Catharines ferry. He and his household lived a couple of blocks from Harris, also in the very centre of town, probably at 22 Hughson Street in St. Andrew's Ward. Hughson Street was a central street that ran to the lake from close to the foot of the mountain and would seem a convenient location for operating a cab business.⁸⁷

Benjamin Harris lived 100 or 150 yards from Thomas Cavill, more or less across the street from Courthouse Square.⁸⁸ In the Notman trial, Harris testified that he visited Dawsey in jail and offered to procure a lawyer for him "if he had anything he had got from Dundas." Dawsey told him where to find Notman's silver tray; Harris retrieved it and took it to one George Notman, who must have been related to William.⁸⁹ Harris provided no explanation for his actions—perhaps Dawsey asked him to return the tray, incriminating though it was—but from what can be learned of Harris, it seems likely that he was a community leader who felt rooted in Hamilton's society and had experience with and even some faith in the legal system. He was an older, Baptist, Kentucky-born gunsmith. Although he indicated that he had a large family elsewhere ("on a farm"), he lived and worked in two-room accommodations with another gunsmith, a younger, Irish-born

⁸⁶ Dawsey, Tillason, Butler, and Foreman were recent arrivals to town, Tillason having come from Burford, and Dawsey and Butler from Brantford: *R. v. Dawsey*, *supra* note 28, at 152, 155. Foreman, Dawsey, and Butler were American-born.

⁸⁷ *Census of 1851*, *supra* note 17, Hamilton, St. Andrew's, at 516.

⁸⁸ The census, the 1853 Hamilton directory, the Hamilton map, and the judge's notes, put together, fail to provide a clear address for Harris, but he probably lived in St. George's ward, one block south of St. Andrew's, between Hughson and John Streets. See *Census of 1851*, *supra* note 17, Hamilton, St. George's, Schedule A, at 122; *City of Hamilton Directory*, *supra* note 19, at 12, 48, 104; *R. v. Dawsey et al.*, *supra* note 28, at 169.

⁸⁹ *R. v. Dawsey et al.*, *supra* note 28, at 169. The Dundas census records have not survived, and I can find no trace of George Notman.

Baptist man, who was unmarked as “coloured” in the census.⁹⁰ Harris’s naturalization record suggests that he had come to Upper Canada in 1831, and he is the only foreign-born man of African descent in Hamilton whose naturalization record I have been able to find.⁹¹ Adrienne Shadd’s work suggests that Harris was something of a community leader, who was involved in a number of efforts to use the law to defend people of African descent.⁹² I suspect that Harris wanted to see Dawsey’s wrongs righted while ensuring that Dawsey had legal representation. Harris may also have been concerned to protect Hamilton’s black community from being suspected of producing such malefactors as Oliver Dawsey.

Price testified to having picked up Cavill and Dawsey separately in the centre of town and taken them to the ferry. Harris’s evidence focused on where he found the silver tray: near his own shop and Cavill’s house. Again, the association was with central Hamilton. Whether by design or not, the connection between blackness and vice in the case was not a straightforward one; that line ran through Prince’s Island.

I suspect, though, that there was a design, in part because of the judge’s inconsistent ascriptions of race, in part because of the defence’s strategy of focusing on the disreputability of Prince’s Island, and in part because Samuel Freeman was the crown prosecutor. Freeman was the key lawyer in the courtroom at the assize. During the Notman burglary case, he may well have been the only one. A local man who lived not far from the small black community in Barton, Freeman was a founding member of the Anti-Slavery Society of Canada in 1851, and he soon after represented John Anderson, a former slave subjected to extradition, whose case was among the most controversial of the period.⁹³ Given Freeman’s commitments, he seems likely to have been inclined to try to confine the foul odour of immorality to Prince’s Island, rather than fanning it toward the neighbourhoods where other people of African descent lived.

It appears to me that contemporaries wanted to understand the trials and law as impartial in the face of racial difference: it was a connection to Prince’s Island—with its various markers of vice, including blackness and interracial sex—that was to be understood as producing crime. As a result, Joseph Butler was convicted of burglary while Thomas Cavill went free. Butler’s subsequent conviction for murder, though, was consistent with the law.

⁹⁰ *Census of 1851*, *supra* note 17, Hamilton, St. George’s, Schedule A, at 122.

⁹¹ I searched Library and Archives Canada’s naturalization records (www.collectionscanada.gc.ca/databases/naturalization/) for approximately 70 names of men of African descent in Hamilton who had been born in the United States.

⁹² Harris protested against two extradition attempts in 1837 and 1841. In 1838 he brought a complaint against two teenage boys who had harassed a group of black churchgoers: Shadd, *supra* note 9, at 99–103, 132.

⁹³ “The Queen vs. George Foreman and Joseph Butler—Murder,” *supra*, note 45; Leatherdale email, *supra* note 65; *Census of 1851*, *supra* note 17, Wentworth, Barton, Schedule A, at 67; Paul Finkelman, “International Extradition and Fugitive Slaves: The John Anderson Case” (1992) 18 Brooklyn J. Int. L. 765 at 767; Robert C. Reinders, ‘Anderson, John’ in *Dictionary of Canadian Biography*, www.biographi.ca. The Library and Archives Canada website indicates that the Anti-Slavery Society of Canada, founded in 1851, was “the last of several short-lived anti-slavery societies in Canada”: Library and Archives Canada, “The Anti-Slavery Movement in Canada,” at www.collectionscanada.gc.ca.

Conclusion

George Foreman and Joseph Butler were convicted of murder and sentenced to hang. Their sentences, however, were commuted, and they were sent to Kingston Penitentiary for life, along with Dawsey (who had been sentenced to seventeen years), Tillason (sentenced to seven), and Ellen Cooper and Mary Ashby, who had each been sentenced to three years for the theft of the clothes they took as they tried to escape.⁹⁴ All disappear from the historical record at that point except for the remarkable Oliver Dawsey. On a dark November night less than a year later—equipped, apparently, with nothing but a rope and a piece of metal, hardly bigger than a ruler and perhaps with some nicks on one end—he escaped from the unfinished penitentiary, alone, and disappeared. One newspaper commentator exclaimed that given the tools Dawsey used to get through the three-foot-thick wall, “[I]t must be acknowledged that his industry and perseverance almost entitle him to a better fate than the dungeon of the Penitentiary.” Whether or not he eventually recovered his ill-gotten riches from some trove somewhere, as the *Dundas Warder* speculated he might, remains a mystery.⁹⁵

Dawsey’s case and those of his companions were constructed, both socially and legally, as arising from the nefarious influence of immoral, marginal characters from beyond the bounds of Hamiltonian society. These cases demonstrate the intertwined relationships among space, moral understandings, and law. The newspaper articles and the evidence in the trials presented Prince’s Island as a place of sin: secret, marshy, bearing a mere “shanty,” and populated by young women and men who slept in the bush, drank whiskey excessively, and had extra-marital, cross-racial sexual encounters and relationships. Such practices were markers of criminality. Prince’s Island was an anomalous space, far from the respectable parts of Hamilton—including the places where the majority of people of African descent in Hamilton lived and worked. Blackness had the potential to signify a predisposition to vice, but maintaining the appearance of impartiality meant suppressing that possibility in legal proceedings. Through the mediating construction of racialized space in Hamilton, the appearance of colour-blindness could be maintained: what Dawsey, Butler, and their companions had actually done was interpreted through their association with the vile moral conditions of that place, so far from the parts of Hamilton where more respectable people of African descent lived and worked. A wrongful burglary conviction against Joseph Butler—who was, after all, charged with murder as well—seemed a small price to pay to keep this orderly geography of race in place.

⁹⁴ Sentences (Hamilton criminal assize, fall 1852) in benchbooks of Robert Baldwin Sullivan, Oxford Circuit, autumn 1852, Common Pleas and Criminal Cases, AO, RG22-390-5, box 45, file 4, 208–209; “Assizes,” *Hamilton Gazette*, November 4, 1852; “The Murderers Reprieved,” *Dundas Warder*, December 10, 1852. I have not managed to find records pertaining to the commutation. Like the trial records for this particular year, those records seem not to have survived.

⁹⁵ “Extraordinary Industry!” *supra* note 72. Cf. “Escaped Convict,” *supra* note 72; “Kingston Penitentiary—Warden’s Letterbook (D. E. MacDonell)” in *Operational Records of the Penitentiary Branch 1848–1856*, Library and Archives Canada, RG 13, D-1, vol. 1050; Province of Canada, Legislative Assembly, *Journals* (September 5, 1854–May 30, 1855), 18 Vict., 1st Sess., 5th Parl., vol. 13, p. DD-[34].

It is hard to be sure of exactly what associations between vice and race hung in the air in Hamilton, once Dawsey and his companions were safely relegated to Kingston's penitentiary. However, the comments made by Samuel Ringgold Ward and Benjamin Drew with which this paper opened suggest that these events, or perhaps others like them, left a mark. Ward, in 1853, acknowledged that "occasion for some prejudice" had resulted.⁹⁶ Drew observed that "the disorderly conduct" of a few members of the black population had "unduly modified" "[t]he commiseration felt for the coloured population on account of their sufferings in the United States."⁹⁷ The references are oblique, but they suggest that an association between blackness and vice was in place. Abolitionists like Samuel Freeman, Ward, and Drew could only encourage the public to take note of the probity and prosperity of the majority of the black community and not be distracted by "the few." The goals of ending slavery in the United States and improving the lot of fugitive slaves in Canada required a particular focus and a narrative of progress. Abolitionists would have understood that the support they were receiving from Canadian society—including churches—was mixed and required careful cultivation.⁹⁸ Pursuing substantive equality was beyond the capacity, and probably largely beyond the imaginings, of that generation of concerned, prominent citizens, as it continued to be for generations that followed. Dawsey, Butler, and the rest were to pass from the record, their deeds, the circumstances of their lives, and the role of racialization in their trials officially forgotten.

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⁹⁶ Ward, *supra* note 7.

⁹⁷ Drew, *The Refugee*, *supra* note 6.

⁹⁸ On the Anti-Slavery Society of Canada and its members and correspondents (who included Freeman and Ward), see Fred Landon, "The Anti-Slavery Society of Canada" (1919) 4(1) *J. Negro Hist.* 33. Regarding churches and other institutions, see Winks, *Blacks in Canada*, *supra* note 2, at 218–32; Simpson, *North Star*, *supra* note 3, at 24–29.