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# North American Counterterritoriality: Nineteenth-Century Black Activism and Alternative Legal Spatiality

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The significance of the North American border between the United States and Canada (British North America) in the nineteenth century emerges through the recognition of two interrelated aspects: one, its racial makeup and, two, how concepts of (counter-) territoriality and "legal spatiality" intersect with this makeup.[1] On the one hand, Robert Sack defines territoriality as "the attempt by ... [a] group to affect, influence, or control people, phenomena, and relationships, by delimiting and asserting control over a geographic area."[2] On the other hand, the concept of legal spatiality describes the "relationship[s] between law and territory [or geographic area]."[3] Taken together, these two concepts create a lens through which to grasp why Upper Canada figured in particular ways as a counterterritory in the discourses on emigration by Black people at the time.[4] This lens also helps to explain better the impact of fugitive slave extradition cases in the first half of the nineteenth century as they challenged conflicting national claims to territory and jurisdiction on the subnational, bottom-up level of community organization along what has become known as a "fluid frontier."[5]

Several aspects converged in constructing Canada (and Upper Canada, specifically) as an alternative counterterritory. Most obviously, these aspects emphasized that it represented everything the US did *not*. For one, it upheld its quasi-mythical position as the terminus of the Underground Railroad (UGRR), whose secrecy undermined the (white) axiom "that liberty is necessarily coupled with seeable territoryality."[6] As an often-praised slavery-free "haven" for fugitives fleeing from US-American bondage, Canadian soil, and the act of crossing the border into Canada, became associated with the personal transformations of these escapees into not only Black freemen but Black royal subjects of the Queen, since Canada's jurisdiction promised those essential citizenship rights that were denied Black people in the United States (such as obtaining formal citizenship, freedom of movement, the right to vote, etc.).

In addition, contemporary Black life writing and abolitionist documents cherished the irony that a monarchy should fulfill the promises of a nominally free Republic. For many, in fact, Canada signified the "truer," the "better" America, and the place where the "American" dream could be realized.[7] Debates among Black leadership also worked with and against this image of the Promised Land, centering on Canada's aptitude to provide freedom, safety, and a potential home for Black people. Most importantly, the debates on emigration to Canada show how actively Black people at mid-nineteenth century were engaged in shaping their future and their ideas of free territory. As much as these debates demonstrate the demand for self-determination, they also exemplify the challenge to the US's territorial and national dominance from a crossborder community. However, they also highlight the complexities involved in turning Canada into such a counterterritory, since these debates ignored Canada's own implications in the slave trade and the institution of slavery, as well the presence of racism and antiblack prejudice.

On the other hand, Canada's increasing attractiveness to both free and formerly enslaved Black women and men provoked sharp protests in the United States. Numerous extradition cases, such as those of Solomon Moseby in 1837 and Nelson Hackett in 1842, were fought by the United States against Canada, Great Britain, and their reputation as the Promised Land for Black fugitives. Such extradition requests represent efforts to extend the US's legal spatiality beyond its national borders. As direct attacks on British (North American) jurisdiction, they constitute a clear example of the scramble for authority and power in North America. At the same time, they illustrate the continuous challenge Black women and men posed to the system of slavery and its geographical claims. With the First and Second Fugitive Slave Laws (1793; 1850) turning the North American borderland into a contested legal space, I argue that Black activism during such extradition cases enacted a form of counterterritoriality that relied on British law and the imperial center to challenge the legality of slavery. Thus, this counterterritoriality adds a further dimension to the "fluid frontier" and introduces alternative forms of "legal spatiality."

In what follows, I will first examine different representations of Canada as a "counterterritory" before turning to Black crossborder activism in part two. Here, I look at two case studies that demonstrate the necessity to work with "the disturbing flexibility of the [US-Canada] border" during fugitive slave crises, and how such incidents, in turn, shape our understanding of legal spatiality.[8]

## Debating Nation, Claiming Territory

The North American borderland before Canadian Confederation in 1867 offers a long, complex history with regard to the interrelated vectors of race, geography, and law. Until the US-American Civil War, the border was considered not simply a political line but a demarcation between slave territory, or more specifically, a slave Republic, and free soil under the proverbial "Lion's paw." This demarcation is deceptive—a clear

border drawn in this way clouds an understanding of far more complicated realities of this borderland, particularly for Black people, whose histories and fates directly challenge such a simplifying perception. Consider two examples from the early nineteenth century, presented by the judge and historian William Renwick Riddell in a collection of documents for the *Journal of Negro History* in 1919. First, in an 1807 letter to Upper Canada's lieutenant governor Francis Gore, David Montagu Erskine, British diplomat and minister-plenipotentiary to the United States,

> regret[s] … the Inconvenience which His Majesty's subjects in Upper Canada experience from the Desertions of their slaves into the Territory of the United States … ; but … fear[s] no Representation to the Government of the United States will at the present avail in checking the evils complained of … . The answer that has been usually given has been "That the Treaty between Great Britain & the United States which alone gave them the Power to surrender Deserters having expired, it was impossible for them to exercise such an authority without the Sanction of the Laws." [9]

He would, however, "forward to His Majesty's Minister for Foreign Affairs, the Memorial above mentioned in the Hope; that some arrangements may be entered into to obviate in future the great Losses which are therein described."[10] In a second example from 1819, then attorney general Sir John Beverley Robinson addresses Gore's successor in office, Sir Peregrine Maitland, offering his opinion in a matter concerning escaped slaves from the US to the province of Upper Canada. He explains "most respectfully" that

> the Legislature of this Province [of Upper Canada] having adopted the Law of England as the rule of decision in all questions relative to property and civil rights, and freedom of the person being the most important civil right protected by those laws, it follows that whatever may have been the condition of these Negroes in the Country to which they formerly belonged, here they are free— … [C]onsideration must notwithstanding any legislative enactment that may be thought to affect it, with which I am acquainted, be extended to these Negroes as well as to all others under His Majesty's Government in this Province—[11]

These examples are telling with regard to some persistent misconceptions of Canada in the long nineteenth century that, in part, shape the country's self-image until today. The refugee slaves from Canada in Erskine's letter reverse a commonly held belief that ignores the legal presence of slavery in New France since the seventeenth century, officially lasting in Upper Canada until 1833. Their escape into US territory also counters

the opinion forwarded by some that slavery in Canada existed in a milder or less aggravated form than in the US.[12] To this day, Canada struggles with both of these beliefs. Robinson's note, on the contrary, speaks to a particular self-understanding that would gain major ground in North America, particularly after the Fugitive Slave Law (FSL) of 1850, casting Canada as the terminus of the Underground Railroad, a slavery-free haven and Promised Land for the enslaved that stood in for the protections of the British monarchy. This self-image relied on the polemical contemporary rhetoric used, for example, by abolitionists that contrasted a "free" monarchy, of all governments, to a morally corrupt, slavery-ridden Republic. While personal freedom and equality before the law became trademarks of the Canadian Canaan as the memory of slavery on its soil was relegated to the back of collective memory, Robinson's affirmation of these traits as guarantees would become much harder to maintain as the century wore on.

By the 1850s, however, Canada had become a long-relevant location for potential Black émigrés and fugitives, especially. The panic and outrage created by the FSL amplified Black immigration to Canada to a level that many perceived as an "exodus" at the time.[13] This also led Black leadership to include Canada in the emigration debate and pronounce on whether to consider Canada as a viable option to seek freedom outside the US. As C. Peter Ripley explains, "[p]recious rights denied in the United States—the right to vote, the right to serve on juries, equal protection under the law—were [guaranteed] in Canada." He adds that "[c]itizenship and legal equality reinforced black perceptions that Canada was a haven, albeit a less than perfect one."[14] Canada continued to be mythologized as "this glorious land of Freedom," even though experiences of discrimination and open antiblack racism, which put Black social equality in the workplace, in public services, and education into question, abounded.[15]

The Black elite had a crucial part in debating Canada's role in their "geography of liberty" and liberation, albeit with different conclusions.[16] The Black North American Convention of September 1851, called for by Henry Bibb in his Windsor paper *The Voice of the Fugitive*, represented the claim for Canada's important role in a transnational abolitionist project. As a cross-border meeting of fifty-three delegates, the convention's resolutions reject the FSL, which had just been passed, support emigration to Canada overall, and recommend their fellow Black people there become "independent tillers of *free soil.*"[17] The delegates also note that Canada would be the best place from which "to assist their brethren who are daily flying from American slavery."[18]

Mary Ann Shadd Cary, one of the most prominent public voices at the time, joined in advocating settlement in Canada West. Her famous promotion of Black settlement, *A Plea for Emigration* (1852), casts the province as the only viable option for Black people.[19] As such, her pamphlet reads as a direct response to certain discourses that were circulating about Canada: Her effort to counter "fears [about an uninhabitable climate] having no foundation whatever" by expressly mentioning the "eminently healthy climate" of Canada West can be read in this vein.[20] Making this the opening section of her *Plea*, Shadd Cary also rejects an imaginary geography often sustained by

white slaveholders to keep enslaved Black people from fleeing to an allegedly unbear-able cold. Instead, she reimagines Canada West as an evolved version of the "Virgin Land" of the New World and a counterterritory to the slave Republic: a place not uninhabited, or waiting for European settlers, but one offering itself to willing Black prospective farmers. In line with an agrarian ideal many other Black leaders sup-ported,[21] her almanac details soil qualities, temperatures, land prices, and fruit and vegetable growth potentials. After all, she observes, soil quality "enters largely into all our ideas of comfort and pecuniary independence."[22]

Shadd Cary also evokes the social prospects for Black citizens in Canada West: whether farmers or tradesmen, "[i]f a colored man understands his business, he receives the public patronage the same as a white man … . [E]very man's work stands or falls according to merit, not as is his color."[23] In addition to this meritocracy, "chattel slavery is not tolerated" in the province, and there is "no legal discrimination whatever affecting colored emigrants in Canada."[24] Reinforcing her support of the British North American Promised Land, she also details the political processes of elections and the oath of allegiance, which she reproduces in full. Doing so, she literally spells out the possibilities for Black settlers to become "entitled to the privileges of British birth in the Province."[25] In accordance with Shirley Yee's assessment of Shadd Cary's activism, such framing of Canada West "facilitate[s] the development of [her] integrationist/assimilationist position," and, what is more, underlines "the legitimacy of a black Canadian identity"—both of these attitudes opposed the concurrent articulations of a Black nationalism (see below).[26]

Though *A Plea* takes an outspokenly critical stance on several issues concerning the Black community in Canada West, such as antibegging and antiseparatist attitudes, Shadd Cary's final rundown of the conditions of Black people in Canada is positive. As she incorporates letters and notes by, for example, Samuel Ringgold Ward, delineating the quasi-certain successes for émigrés, she also makes an express point of enforcing the contrast to the United States: "Persons emigrating to Canada, need not hope to find the general state of society as it is in the States," although there is yet "a strong class feeling."[27] She is quick to downplay the existing racial prejudice in "the Yankees, in the country and in the States adjoining" on the grounds of the different societal constitution of English (and British North American, by extension) and US-American societies. Most importantly, she explains that in an English-dominated society, there was, after all, "more independent thought and free expression than among Americans."[28]

Martin R. Delany, arguably the most outspoken Black nationalist in this period, does not partake in the general optimism and vigor with which Shadd Cary promotes Canada West as the "only" settlement option for Black people outside the United States. In his "black nationalist manifesto," *The Condition, Elevation, Emigration, and Destiny of the Colored People of the United States* (1852), Delany outlines his own vision of an ideal destination for Black people.[29] Within this project of elevation, self-improvement, and self-determination, Canada West plays only a subordinate, second-choice role. Though Delany firmly postulates that "[u]pon the American continent [Black people] are determined to stay, in spite of everything odd against [them]," he

excludes Canada West from long-term solutions.[30] The reason, he claims, is a "political objection," but there is more to it.[31] In fact, Delany takes up a concern that other Black leaders shared, i.e. not solely the geographical proximity to the "slave Republic" but the potential influence of "Americanism" on the Canadians' attitude toward Black people.[32] Delany observes that Canadians and Americans share "the same common parentage [i.e., Anglo-European]," and is certain that the annexation of Canada is not merely a hypothetical project of the United States but a concrete threat.[33] In fact, such prospects were considered a real possibility by many Canadians and were debated in the press. Delany's fear that Canadians would more openly than not welcome annexation was not entirely unfounded, either: Ripley explains that proannexation groups existed and that "a serious annexation movement emerged in the Canadas in the late 1840s … [that] appealed primarily to embittered Conservatives and young French-Canadian nationalists and was particularly strong in Montreal … ."[34]

More significantly for Delany, annexation would signify the uncontrolled extension of the "odious infamous" FSL, casting the shadow of a geographical expansion, no less, of what equaled a reign of terror for Black people.[35] In view of the public discussions of annexation, Delany is only one voice who recognizes the potential to turn the fluid frontier into a legal hunting ground by catering to what were, in fact, US imperialist territorial claims projected onto legal demands. Portraying Canadians as naïve "'brethren,'" easily lured into a "bloodless" takeover, he confirms that "the Canadas are no place of safety for the colored people of the United States; otherwise we should have no objection to them."[36]

Instead, he proposes Central and South America, as well as the West Indies as "the ultimate destination" for Black people in America.[37] After his deconstruction of the Canadian Promised Land, Delany calls attention to several crucial aspects that Shadd Cary had claimed for Canada before, praising the climatic and agricultural aptitude of these regions and the nonprejudicial treatment of prospective Black émigrés in the absence of "an inequality on account of race or color."[38] Most importantly, however, Delany points out a few crucial differences to Canada that explain his preferences of New Grenada and Nicaragua. Unlike Canada and the US's "common [Anglo-European] parentage," Delany seeks to establish common lineages with the inhabitants of these regions, who are "precisely the same people [i.e., Black] as ourselves and share the same fate with us."[39] In his terms, they are "waiting" for the North American brothers to join them in their quest to realize their full "manhood" as independent nations.[40]

Nicaragua and New Grenada quickly become the opposite of Canada, still *British* North America, in that Delany suspects "no fear of annexation" there. This has both geographical reasons, because they are not adjacent to the United States, and ideological ones, as the US would not, according to Delany, burden itself with more people of color. If Shadd Cary had idealized Canada West in many respects, so does Delany with Nicaragua and New Grenada. Their role model function of the then-independent republics lies not simply in their relative (geographical) safety from US interference but

in the position he assigns them in a system of imperial checks and balances: For Delany, the prospect for Black émigrés to participate in the creation of a "union of South American States" is real—one that would be "kept in check" by the US "as the British nation serves to keep in check the Americans."[41] True to the status of the *Condition* as a Black nationalist tract, Delany is here remapping the Americas—including Canada— along the lines of and focused on Black people's political interests. What is more, he is also commenting on imperialism and an imperialist countermovement: Ikuko Asaka has explained how Black refugees in Canada were strategically pursuing a "black imperial identity" within the British empire via Black West Indians as "the legitimate and authentic beneficiaries of British emancipation."[42] Delany extends and shifts this "black diasporic affiliation" to Nicaragua and New Grenada.[43] He claims that, there, Black people could count on British protection: "[T]he British *nation* is bound by solemn treaty [which remains unspecified], to protect both of those nations from foreign imposition."[44]

Reasoning such as that presented by Shadd Cary and Delany illustrates, then, that the issue of Black emigration was not solely political. Rather, it combined politics and geography in that it directly challenged the conflicting territorialities and, above all, legal spatialities of the United States and Great Britain that, at the time of publication of both the *Plea* and the *Condition*, had clashed in North America. Their projections of Black emigration under the auspices of forming alliances with the British monarchy and *not* an American republic paraphrase and speak back to a major political conflict between the two countries that came to a head in the first half of the nineteenth century, i.e., the appeals by the United States for extradition of fugitive slaves from Canada (as British North America).

## The Legal Spatiality of Fugitive Extradition Cases

Aside from considering how Canada's ambiguous role in providing free territory for Black settlement was shaped by personal experiences and the discourse of emigration among the Black elite, it is crucial to acknowledge its participation in what scholars have termed the "fluid frontier" between the United States and Canada along the Detroit River region to further understand the complex realities that influenced the convergence of race, territory, and law in the nineteenth century. In particular, the following tries to think together how fugitive slave extradition cases inform our understanding of a fluid frontier in which emigration, immigration, and forced and voluntary movements were a reality. In this process, concepts of territoriality and legal spatiality help us appreciate the significance of such cases—and also how, vice versa, such cases and their different outcomes help us illustrate these concepts in the creation of a counterterritory.

Afua Cooper initially defined the fluid frontier along the Detroit River between the United States and Upper Canada in two ways.[45] First, it was fluid "in reference to its watery nature."[46] The second, metaphorical layer of meaning is just as important

for the present piece, since the term is an expression also for "the shifting and multiple nature of identities, which are constantly negotiated in border zones."[47] As such, we must consider the "identity" of fugitive slaves, which often saw themselves transformed into "freemen" and Black subjects of the British monarchy, a part of the "new social, political, class, and other identities of the Black North Americans who crossed and re-crossed [the fluid frontier]."[48] A new third tier to this borderland consists in the legal and territorial implications that influenced people, their movements, and, vice versa, the ways in which Black people envisioned this space.

The edited collection by Karolyn Smardz Frost and Veta Smith Tucker, *A Fluid Frontier* (2016), represents the authoritative state of the art on this borderland, and extends Cooper's definition by zooming in on the aspect of Black resistance, particularly. In their introduction, they highlight the twofold nature of the Detroit River borderland both as "a boundary [suggesting fixity, stability, authority] *and* a passageway [suggesting malleability, permeability]."[49] Considering the scholarship assembled in their publication, it is crucial to recognize the strong Black communities on both sides of this international border, which formed "a unique transnational [*cross-border*] African American/Canadian society" that was united in its commitment to "resisting both slavery and racial oppression."[50] As with Cooper, there is a sense of an active shaping of this borderland by Black people; and this claim to agency is most pronounced in concerted antislavery action and "in a cooperative and highly organized effort to assist freedom-seekers on their way to Canada."[51]

Consequently, in a border zone in which fugitives were part and parcel of an exchange of goods, ideas, and people, issues of conflicting territorialities by "two different sovereign states … and their border-maintaining mechanisms" were bound to arise.[52] Processes like the flight from slavery, the attempted and sometimes successful kidnappings of fugitives in Canada, formal extradition requests by the United States, and the "abduction" of fugitives out of extradition's way constitute dramatic challenges to the legal spatiality of the two involved nations. At the same time, such incidents provoked remarkable scenes of community activism, as the fugitive slave cases here demonstrate. Gayle T. Tate's observations on collective efforts find their corollaries in fugitive slave cases in that there is a "collective political violence" involved in these cases, considering the often violent physical nature of the rescues, which shapes this effort also as a "component … of Black resistance"[53] and a crucial feature of the fluid frontier's legal and territorial underpinnings.

Clearly, fugitivity and extradition requests tested territoriality, understood by Kahler, following Sack, as "[the] delimitation of boundaries and [the] behavior within those boundaries."[54] As the letter by Robinson discussed above shows, the requests challenged the authority and reputation of the two nation-states, and thus had a much more profound symbolic significance. As the ultimate legal and "more aggressive" means to try and recover from Canada what they had "lost," slaveholders' requests also destabilized Canada's position as the safe haven and, more often than not, made authorities refer back to the imperial center for clarification (see below).[55] Fugitive

slave cases forced agents of the fluid frontier to acknowledge and deal with the interrelatedness of geography, law, and territory. In this way, T. K. Hunter's observation, though made in a different context, applies well to the dilemma Canada found itself in: "[The] location of the law [i.e., the place and limits of jurisdiction] [was] essential to the operation of the law. Liberty ... was determined by geography."[56] In other words, fugitives and the slaveholders eager to have them returned to their status as objects and possessions posed the fundamental question to Canada's government, i.e., "[c]an we allow the presence of bondage within a geographic space designated by its inhabitants to be a haven—both ideologically and practically—of liberty?"[57]

Aside from the legal considerations of which sovereign law was applicable up until which political boundary, fugitive slaves also questioned "how Canada [was] spatially produced."[58] Dominated by white Europeans as the privileged settler group, Canada's territorial makeup was widely rationalized as a white space.[59] Black people in Canada had always countered this effect by asserting their presence in Black neighborhoods, all-Black settlements, and through Black organizations, but fugitives forcefully inscribed themselves into the landscape. Using the routes of the Underground Railroad, or braving the dangerous geography to freedom without aid, their actions drew attention to and provoked reactions concerning the fact of Canadian Blackness/Blackness in Canada and its Black spaces and locales. Most importantly, fugitives and those who assisted them in their escape and their arrival in Upper Canada created their own "geography of liberty" on subnational and transnational levels by defying established (political) borders, bounded territories, and the legal spatialities attached to them. Finding themselves in extreme situations as they attempted to reach free soil and secure their lives, fugitives subverted the nation-state, in a way, by relying on the unique cross-border community that Smardz Frost and Smith Tucker invoke as having been in place in the Detroit River borderland. Nevertheless, the status of the border is more ambiguous: At the same time that fugitives were crossing political and geographical borders in defiance, they also relied on the symbolic function of those borders—the illusion of their fixity and concreteness—to demarcate free and enslaved spaces.

Two case studies demonstrate how the consequences of this double status played out. Although the very famous cases were few in number, extradition cases were often highly publicized.[60] The examples discussed here, among the first extradition requests, occurred between 1837 and 1842. Solomon Moseby fled from Kentucky, Nelson Hackett from Arkansas.[61] They had in common that both fugitives stole their "masters'" horse to escape. Theft was the perfect justification for slaveholders to ask for the return of fugitives *as criminals* and represented a challenge to the alleged "antislavery bias" of the Canadian courts.[62] Moseby came close to being extradited to the United States, but a large crowd of Black people intervened to rescue him. The protests escalated and in the ensuing riot, Moseby escaped. Although Nelson Hackett's case seemed somewhat similar to the former, he complicated matters when he

stole not only the horse but also his "master's" gold watch—an item deemed unneces-sary for his escape.[63] The final decision that he was to be sent back marked "the first instance in which criminal extradition had retrieved a fugitive slave from Canada."[64] The South could triumph, and the abolitionists dreaded the consequences for future cases.

The Moseby escape is notable, most importantly maybe, for the aspects of drama and spectacle it enacted, and for the role of Black women in the community's "organizational capability" that it highlights.[65] Moseby's route took him from Ken-tucky to Buffalo and into Upper Canada. Instead of finding freedom, however, Moseby was arrested by deputy sheriff Alexander McLeod and put in the Niagara jail for allegations of theft by his former "master" David Castleman.[66] The latter's efforts to have Moseby extradited led to the formal order to deliver Moseby up by mid-September 1837. This order was met with fierce resistance by Niagara's local Black community, however. Their communal effort and the authorities' response eventually escalated into, as David Murray has observed, "the first race riot in Upper Canada."[67]

The significance of Moseby's capture and imprisonment also lay in the fact of its "crisis" potential to affect other fugitives and Black inhabitants in the province, even though the legal status quo at the time held that "[e]scaping from slavery in the United States could not in itself constitute a crime in Upper Canada, where slavery did not exist."[68] Niagara's white inhabitants relied on what Murray describes as "traditional" ways of taking action[69]—signing a petition on Moseby's behalf and asking the lieuten-ant governor Sir Francis Bond Head to refer the case to Britain for a decision. It is crucial that Murray's interpretation of the white population's behavior in the Moseby case is focused on their "appeal … to Bond Head's *British* patriotism," and on their intent to defend a "vital principle of the British constitution, the sanctuary provided for refugee slaves in all British colonies … ."[70] Trying to involve the imperial center to clarify the situation of fugitives in the North American borderland and to maintain Canada's reputation did not help Moseby then and there, but would occupy both British and British North American authorities in the decades to come.

After Niagara's inhabitants had raised a thousand dollars to make Castleman abandon his extradition plans, which he refused, the local Black community took immed-iate action. Community leaders Herbert, called "Hubbard," Holmes and Sally Carter, especially, organized a three-week vigil outside the Niagara jail to demonstrate presence and support, attended, an eyewitness later remembered, "from 200 to 300 …, some say over 400," Black locals.[71] When Sheriff McLeod arrived with armed consta-bles to take Moseby from the jail, the situation escalated. Shots were fired, but the Black protesters were successful in carrying Moseby away from the skirmish, and he disappeared. He eventually reached Montreal, sailed for England, and later returned to Niagara. In the fighting, Holmes and Jacob Green were shot dead, several others wounded, and about twenty Black individuals were arrested (and quickly released).

Looking at contemporary and historiographical accounts of the Moseby case helps to acknowledge its impact, no less, on the legal situation of Black people and on

the legal spatiality in the fluid frontier. It is notable, for example, that the vigil by (unarmed, peaceful) Black people outside the jail was obviously perceived as a threat by (white) authorities. Murray notes that McLeod arrived not only with the armed constables mentioned but also with "some soldiers" at the scene.[72] Janet Carnochan, who presented the first scholarly rendering of the case in 1897, later described the sheriff "on horseback with a drawn sword."[73] Before carrying Moseby out of the jail, officers read the Riot Act to the crowd—a demonstration and warning of sovereign power. In contrast, the Black crowd outside, eyewitnesses recall, were ready to "live with [Moseby] or die with him," paraphrasing Patrick Henry's legendary revolutionary motto "Give me liberty, or give me death."[74] The Moseby case, then, is one in which the language of war and the US-American revolution are invoked to create the setting for what Carnochan romantically termed an instance of "moral heroism."[75]

　　　In addition to the violent, almost orchestrated drama that reached its climax in front of the Niagara jail, the aspect of spectacle makes the Moseby case remarkable, though not unique.[76] Indeed, Moseby was handcuffed and shoved onto a wagon inside the jail, meaning authorities would have had to parade him across town before sending him on a boat back to enslavement. As an image of enacting sovereign power, the image of the shackled prisoner on public display is powerful.[77] Equally powerful, however, is the usurpation of the sovereign authority to punish by Niagara's local Black community. The scene is described most vividly in Carnochan's account of the day:

> the gates [of the jail] are thrown open and the spirited team came out with a rush. Two hundred determined black men on each side of the road and across in front of the bounding team were there as well. Most of them, personally, had felt the lash of slavery; … Holmes, although a heavy, corpulent man, was the first to reach the horses' heads and bring them to a standstill; another man took hold of the other horse, and a third black man by the name of Green, … locked the waggon. The prisoner, whose handcuffs had either not been locked or had been so weakened that they easily broke, jumped from the waggon into the thickest of the crowd and disappeared.[78]

This act of "civil disobedience" by Niagara's Black inhabitants made clear that they were willing to take on official authorities, though they represented the very nation that had promised them freedom from enslavement. [79] When the United States and Great Britain/British North America were struggling to assert their respective laws in their territories, Black Niagarans took matters into their own hands, and reminded the government of their "manifest injustice."[80] Despite the successful rescue of Moseby, however, Black people in the larger province of Upper Canada were aware of the dangerous precedent his arrest and planned extradition might set. The proceedings of a meeting of Black Torontonians only a few months later refer to this fear, as well as the responsibility of the provincial government to assure their protection: Resolution

5 states that, in regard to the Moseby case, "we have every reason to believe that similar *pretences* in future will receive that degree of scrutiny from the authorities of this Province, which will afford ample protection to the injured."[81]

It seems that when Nelson Hackett escaped in July 1841, authorities labored to prevent the public drama that had accompanied the Moseby affair.[82] The events of the case, as well as Hackett's final return to bondage, explicitly comment on the fluid frontier between the US and Upper Canada, as well as the increasing importance and urgency that fugitive slave cases carried in their challenge to the intersections of territory and law. Hackett reached Upper Canada via stations in Illinois, Indiana, Ohio, and Detroit, around six weeks after his escape on horse, but his former "master" Alfred Wallace, a well-to-do, prominent, influential Fayetteville merchant, and his associate George C. Grigg were already in pursuit of him. They both made several depositions against Hackett for theft of the horse, a gold watch, and a coat on both sides of the border (Upper Canada; Michigan). Wallace then had Hackett arrested and confined in the Western District jail at Sandwich, Upper Canada. An additional charge of rape was dropped. Hackett first confessed, but later retracted on the grounds of having been violently abused during the interrogation.

Wallace, with cross-border legal support from lawyers both in Sandwich (John Prince) and Detroit (Lewis Davenport), had the Michigan governor send an extradition request to Governor-General Lord Sydenham on September 18, 1841. Wallace persisted, achieving, together with Grigg, that a grand jury in Arkansas indicted Hackett for theft (larceny) on November 26, 1841. This was followed by the official request by Arkansas governor Yell to Canadian authorities to return Hackett to the States. Finally, in January of 1842, the new Canadian governor-general, Sir Charles Bagot, ordered that Hackett be returned as a *criminal*, following the Provincial Executive Council's recommendation. In the process, two petitions, one by Hackett himself to Lord Sydenham from September 1841, one signed by one hundred seventy-eight Black individuals from Hamilton, Upper Canada, to Tory leader Sir Allan MacNab, proved unsuccessful.[83]

Hackett's petition, "his sole legal action," nevertheless transmits his clear sense of urgency and impending doom.[84] Signed in the Sandwich jail, it outlines the physical and mental abuse he had witnessed at the hands of prosecutors, who had "severely beaten [him] over the head with the butt of a whip and a large stick."[85] Hackett also describes Wallace's racist plot to invent the rape of his daughter "to produce a [public] feeling against [the] petitioner"—a plot against which only "the humanity of the British law," he knew, could protect him.[86] His apprehensive warning that "should he be taken back to Arkansas, he will be tortured in a manner that to hang him at once would be mercy" dramatically illustrates the full force of slavery's reach beyond the border.[87]

Reacting immediately to Bagot's decision to extradite, Black inhabitants sought help across the border with lawyer Charles Stewart of Detroit, incidentally one of the presidents of Michigan's Anti-Slavery Society, whose account of the Hackett affair

represents a crucial testimony of the contemporary outrage the case created. Published in the *Emancipator and Free American* on September 15, 1842, Stewart's report reflects the frustration, disappointment, anger, and fear shared by many abolitionists and, above all, the Black communities on both sides of the fluid frontier. Stewart recognizes the representative quality of Hackett's case both for those who engaged in antislavery work as well as "the British government."[88] He explains that it was obvious to the Black community that Hackett's return had been a kind of farce and nothing more than "a vindictive persecution for daring to assert self-liberty."[89] The Black community knew, he states, that this case would test the "British sense of right," and that it was a crucible "to know if *their government* would screen villainy."[90] Stewart, visiting Hackett in the Detroit jail where he was first kept after the extradition in the spring of 1842, despondently admits that the Detroit abolitionists needed to surrender themselves to the impossibility of making another viable case for Hackett, due to the fact that he had been, indeed, "in custody as a *criminal, not* as a slave; and that he was an aggravated criminal, Britain's unusual surrender nationally avowed."[91]

While Hackett disappeared back into Southern slavery in June 1842, the transatlantic public outrage did not abate for some time. In Britain, abolitionists in the House of Commons inquired about Hackett, and ladies' societies both in Bristol and Liverpool unsuccessfully tried to purchase Hackett's freedom.[92] In Upper Canada's provincial parliament, members "denounce[d]" Hackett's return "as immoral and unconstitutional."[93] In view of the bilateral Webster-Ashburton Treaty, which had, ironically, just been signed in August 1842, containing the famous Article 10 on extradition of *criminals*, both American and British abolitionists demanded a clear stance that this treaty would not affect fugitive slaves. Roman J. Zorn even speaks of a "political campaign" to "mobilize public opinion" against the article, which only somewhat abated after the assurance that "Crown officials would follow the most liberal interpretations of British law in maintaining protection for ex-slaves."[94]

This attempted assurance cannot mitigate the fact that authorities in both countries had obviously recognized not only the impact of fugitive slave cases on public opinion but also the need to find a legal regulation of the ever-increasing numbers of Black fugitives. Clearly, officials tried to avoid a drama comparable to Moseby's when, after Hackett's extradition had been decided, they moved him from Sandwich to the jail in Detroit across the border, at night, out of sight of the public, "bound and gagged."[95] As Stewart observes, expressing the widely felt indignation, sneaking the prisoner out of the country did not at all "impart … dignity to the law," but gave it the aura of illegality itself.[96] The authorities' insistence on speed and secrecy reverses Moseby's rescue in broad daylight, in front of everybody's eyes. Stewart's rhetoric in his account also reinforces the symbolic reversal of Canada's image as the Promised Land, which would take serious damage as a result of the Hackett case. Reminding readers that Hackett was basically abducted "at 9 or 10 o'clock of a winter's night, in the Canadas, when the severity of the season had housed every person and animal," Stewart overturns Canada's reputation of a sanctuary and

instead relies on the common negative stereotypes that cast it as an uninviting, cold country of the North.[97] The image of Hackett in chains on a boat "amidst masses of floating ice" also performs the reverse journey of (self-)liberation to Canada back into bondage in the United States.[98] Hackett had been turned, according to Stewart's interpretation, into a "victim to combined power, skill, wealth," betrayed by British and Canadian officials who had given in to the influence of "the American slave owner."[99] What granted Hackett's case so much gravity was the fact that it was the first (and only) successful extradition of a fugitive, and in terms of territoriality and law, a victory of "the vindictive passion of a slavocracy" over "the impartial majesty of [monarchical] law."[100]

The North American border in the nineteenth century posed a fundamental problem for the agents of the fluid frontier: it was both necessary and impossible to ignore its presence and its ambiguous status. For fugitives from slavery as well as representative leaders, the political border between the US and Canada was of a symbolic importance in that it separated two different nation-states—one represent-ing freedom, one unfreedom and slavery. Crossing the border held the promises of a free life and citizenship, or subjecthood, within a monarchy. It was also clear, however, that Canada was not the only option for fugitives and prospective émigrés, and that other nations free from European dominance could hold similar hopes of realizing "manhood" and independence. On the other hand, the border often did not seem concrete or fixed at all, as the continuous movements across the fluid frontier show. It has become clear that we must consider the repercussions of legal and territorial claims to be crucial features of this frontier. The actions of Black people to fugitive extradition requests challenged slavery's zone of influence and its move northward. In addition to taking part in a form of cross-border resistance and bottom-up community activism, as some scholars have pointed out, their efforts enact a form of legal spatiality that forced both nation-states to turn their eyes on the fact of the fugitive slave case. As such, the topicality of fugitivity and community organization also stand as a powerful reminder as we face the challenges of migration, diaspora, and dispersal today.

**Notes**

[1] Kal Raustiala, "The Evolution of Territoriality: International Relations and American Law," in *Territoriality and Conflict in an Era of Globalization*, ed. Miles Kahler and Barbara F. Walter (Cambridge: Cambridge University Press, 2006), 219.

[2] Sack qtd. in Miles Kahler, "Territoriality and Conflict in an Era of Globalization," in *Territoriality and Conflict in an Era of Globalization*, ed. Miles Kahler and Barbara F. Walter (Cambridge: Cambridge University Press, 2006), 3.

[3] Raustiala, "The Evolution," 219.

[4] There are several terms for "Canada" in this essay. Upper Canada (modern-day Southern Ontario and some areas of Northern Ontario) and Lower Canada (today's Quebec) were created by the Constitutional Act of 1791. The Province of Canada was created by the Act of Union in 1840 and was subsequently divided into Canada East and Canada West in 1841. The Province of Canada ceased to exist upon Confederation in 1867. Whereas the first section of this essay is concerned with what Black leaders wrote about Canada West, the two fugitive slave case studies still occurred in Upper Canada.

[5] See Afua Cooper, "The Fluid Frontier: Blacks and the Detroit River Region; A Focus on Henry Bibb," *Canadian Review of American Studies* 30, no. 2 (2000): 129–49, https://doi.org/10.3138/CRAS-s030-02-02; Karolyn Smardz Frost and Veta Smith Tucker, eds., *A Fluid Frontier: Slavery, Resistance, and the Underground Railroad in the Detroit River Borderland* (Detroit: Wayne State University Press, 2016).

[6] Katherine McKittrick, "Freedom Is a Secret: The Future Usability of the Underground," in *Black Geographies and the Politics of Place*, ed. Katherine McKittrick and Clyde Woods (Toronto: Between the Lines, 2007), 101.

[7] As George Elliott Clarke summarizes with regard to accounts of Canada compiled in Benjamin Drew's *The Refugee*: "Canada is now the *true* land of opportunity." See George Elliott Clarke, "'This is no hearsay': Reading the Canadian Slave Narratives," *Papers of the Bibliographical Society of Canada* 43, no. 1 (Spring 2005): 26, n36, https://doi.org/10.33137/pbsc.v43i1.18415.

[8] Ikuko Asaka, "'Our Brethren in the West Indies': Self-Emancipated People in Canada and the Antebellum Politics of Diaspora and Empire," *The Journal of African American History* 97, no. 3 (2012): 221, https://doi.org/10.5323/jafriamerhist.97.3.0219.

[9] William Renwick Riddell, "Notes on Slavery in Canada," *The Journal of Negro History* 4, no. 4 (Oct. 1919): 396–97, https://doi.org/10.2307/2713434.

[10] Riddell, "Notes on Slavery," 397.

[11] Riddell, "Notes on Slavery," 397–98.

[12] This argument was brought forth by Marcel Trudel in his authoritative history of slavery in New France, see Marcel Trudel and Micheline D'Allaire, *Deux siècles d'esclavage au Québec* (Montréal: Bibliothèque québécoise, 2009).

[13] Michael Wayne, in 1995, has been able to relativize the myth of the fugitive exodus. Based on his extensive analyses of the census reports, in particular, Wayne shows that both the numbers of incoming fugitives as well as returnees at the onset of the Civil War were exaggerated (see 466, in particular). It remains undisputed, however, that such was not the general impression at the time. It is safe to say that the Fugitive Slave Law changed the dynamic in North America palpably after 1850. Michael Wayne, "The Black Population of Canada West on the Eve of the American Civil War: A Reassessment Based

on the Manuscript Census of 1861," *Histoire Sociale/Social History* 28, no. 56 (November 1995): 465–85, https://hssh.journals.yorku.ca/index.php/hssh/article/view/16644.

[14] C. Peter Ripley, "Introduction," in *The Black Abolitionist Papers, Vol. II: Canada, 1830–1865,* ed. Ripley et al. (Chapel Hill: The University of North Carolina Press, 1986), 6, 7.

[15] "47. Proceedings of a Meeting of St. Catharines Blacks," in *The Black Abolitionist Papers,* 298.

[16] T. K. Hunter, "Geographies of Liberty: A Brief Look at Two Cases," in *Prophets of Protest: Reconsidering the History of American Abolitionism,* ed. Timothy P. McCarthy and John Stauffer (New York: New Press, 2006), 41.

[17] "23. Proceedings of the North American Convention," *The Black Abolitionist Papers,* 152 (original emphasis).

[18] "23. Proceedings," *The Black Abolitionist Papers,* 154.

[19] Shadd Cary also wrote another essay on emigration, "Hints to the Colored People of the North", in 1849. For more details and discussion, see Yee.

[20] Mary Ann Shadd Cary, *A Plea for Emigration; or, Notes of Canada West* (Detroit: George W. Pattison, 1852), 6.

[21] William Wells Brown lauds Black farmers in Dresden and Colchester during his visit to Canada West (see "89. The Colored People of Canada," *The Black Abolitionist Papers,* 480); Bibb's settlement project for Black people contained an agricultural program (see "22. Editorial by Henry Bibb," *The Black Abolitionist Papers,* 144); the delegates of the North American Convention emphasized the importance of farming for prospective settlers (see "23. Proceedings," *The Black Abolitionist Papers,* 152).

[22] Shadd Cary, *A Plea,* 8.

[23] Shadd Cary, *A Plea,* 16.

[24] Shadd Cary, *A Plea,* 16; 26.

[25] Shadd Cary, *A Plea,* 28.

[26] Shirley J. Yee, "Finding a Place: Mary Ann Shadd Cary and the Dilemmas of Black Migration to Canada, 1850–1870," *Frontiers: A Journal of Women Studies* 18, no. 3 (1997): 2; 6–7; https://www.jstor.org/stable/3347171. At the same time, Yee also critically discusses the limits of Shadd Cary's visions and her politics, see esp. 9–10.

[27] Shadd Cary, *A Plea,* 35.

[28] Shadd Cary, *A Plea,* 34. Shadd Cary includes a number of letters from Samuel Ringgold Ward in her *Plea*; this is likely one of them.

[29] Martin R. Delany, "The Condition, Elevation, Emigration, and Destiny of the Colored People of the United States," in *Let Nobody Turn Us Around: An African American Anthology*, ed. Manning Marable and Leith Mullings (Lanham, MD: Rowman & Littlefield, 2009), 70.

[30] Martin R. Delany, *The Condition, Elevation, Emigration, and Destiny of the Colored People of the United States* (1852), 52, http://www.gutenberg.org/files/17154/17154-h/17154-h.html.

[31] Delany, *The Condition,* 52.

[32] Delany, *The Condition,* 52. See also Ward's editorial from March 24, 1853, "36. Samuel Ringgold Ward and Canadian Racism," *The Black Abolitionist Papers*, 230.

[33] Delany, *The Condition,* 52–53.

[34] *The Black Abolitionist Papers,* 241. Ripley explains that the annexation movement faded only in the wake of changing political conditions such as the passage of the FSL in 1850 (see 241).

[35] Delany, *The Condition,* 53.

[36] Delany, *The Condition,* 53.

[37] Delany, *The Condition,* 53.

[38] Delany, *The Condition,* 54.

[39] Delany, *The Condition,* 54.

[40] Delany, *The Condition,* 57.

[41] Delany, *The Condition,* 54.

[42] Asaka, "'Our Brethren,'" 220, 221.

[43] Asaka, "'Our Brethren,'" 220.

[44] Delany, *The Condition,* 57; emphasis added.

[45] Cooper, "The Fluid Frontier."

[46] Cooper, "The Fluid Frontier," 131.

[47] Cooper, "The Fluid Frontier," 131.

[48] Cooper, "The Fluid Frontier," 131.

[49] Karolyn Smardz Frost and Veta Smith Tucker, "Introduction," in *A Fluid Frontier*, 3.

[50] Smardz Frost and Smith Tucker, "Introduction," 11 (emphasis added); 6.

[51] See Cooper, "The Fluid Frontier," 130; Smardz Frost and Smith Tucker, "Introduction," 12–13.

[52] Cooper, "The Fluid Frontier," 131.

[53] Gayle T. Tate, "Free Black Resistance in the Antebellum Era, 1830 to 1860," *Journal of Black Studies* 28, no. 6 (July 1998): 767, http://www.jstor.org/stable/2784816. Smardz Frost and Smith Tucker agree on the fact of "the collaborative resistance that took place on both sides of the Detroit River when slavery was a fact of daily life" (Smardz Frost and Smith Tucker, "Introduction," 1).

[54] Kahler, "Territoriality and Conflict," 3.

[55] Gordon S. Barker, *The Imperfect Revolution: Anthony Burns and the Landscape of Race in Antebellum America* (Kent, OH: Kent State University Press, 2010), 92.

[56] In his article, Hunter focuses on the *Somerset* case from 1771–1772 and on *Commonwealth v. Aves* from 1836. Hunter, "Geographies of Liberty," 43.

[57] Hunter, "Geographies of Liberty," 42.

[58] Katherine McKittrick, "'Their Blood Is There, and They Can't Throw It Out': Honouring Black Canadian Geographies," *TOPIA: Canadian Journal of Cultural Studies* 7 (Spring 2002), 27, https://doi.org/10.3138/topia.7.27.

[59] See McKittrick, "'Their Blood,'" 28.

[60] Other fugitive slave cases that affected the North American borderland involved, for example, Jesse Happy (1837), William "Jerry" Henry (1851), Shadrach Minkins (1851), and John Anderson (1860).

[61] Other spellings of Moseby's name include Molesby or Mosely, but I stick to the use in Murray's authoritative article.

[62] Barker, *The Imperfect Revolution*, 98.

[63] See Barker, *Imperfect Revolution*, 98.

[64] Roman J. Zorn, "Criminal Extradition Menaces the Canadian Haven for Fugitive Slaves, 1841–1861," *The Canadian Historical Review* 38, no. 4 (December 1957): 286, https://doi.org/10.3138/CHR-038-04-02.

[65] Murray, "Hands Across the Border," 188.

[66] The facts of the case are taken from David Murray's authoritative discussion, as well as from Janet Carnochan and Roman J. Zorn. Janet Carnochan, "Slave Rescue in Niagara Sixty Years Ago," *Niagara Historical Society* 2 (1897): 8–18; David Murray, "Hands Across the Border: The Abortive Extradition of Solomon Moseby," *Canadian Review of American*

*Studies* 30, no. 2 (2000): 187–209, https://doi.org/10.3138/CRAS-s030-02-05; Zorn, "Criminal Extradition."

[67] Murray, "Hands Across the Border," 187.

[68] Murray, "Hands Across the Border," 188, 189.

[69] Murray, "Hands Across the Border," 198.

[70] Murray, "Hands Across the Border," 191 (emphasis added). One of Janet Carnochan's eyewitnesses explains that "the majority of the whites were opposed to the surrender but did not want to interfere …" (Carnochan, "Slave Rescue," 13).

[71] Carnochan, "Slave Rescue," 11, 13.

[72] Murray, "Hands Across the Border," 187.

[73] Carnochan, "Slave Rescue," 14.

[74] Carnochan, "Slave Rescue," 11.

[75] Carnochan, "Slave Rescue," 8.

[76] The most (in)famous case that comes to mind is the return of Anthony Burns to slavery from Boston in 1854, under the eyes of a large crowd. For an extensive discussion of the Burns case, see Barker, *Imperfect Revolution*.

[77] The exposure of the fugitive-as-prisoner in this way bears strong resemblance, of course, to Foucault's "punishment as spectacle." Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York: Vintage, 1995), 8.

[78] Carnochan, "Slave Rescue," 14.

[79] Murray, "Hands Across the Border," 193.

[80] Murray, "Hands Across the Border," 198.

[81] "5. Proceedings of a Meeting of Toronto Blacks," *The Black Abolitionist Papers*, 69 (original emphasis).

[82] For the facts of the case, the main references are Elizabeth Abbott-Namphy, "Hackett, Nelson," in *Dictionary of Canadian Biography*, vol. 7, University of Toronto/Université Laval, 2003–, http://www.biographi.ca/en/bio/hackett_nelson_7E.html; Charles H. Stewart, "Case of Nelson Hackett," *Emancipator and Free American*, September 15, 1842, n. pag., http://find.galegroup.com/ncnp/
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International Repercussions," *The Arkansas Historical Quarterly* 16, no. 2 (Summer 1957): 139–49, https://www.jstor.org/stable/40018447.

[83] "7. Nelson Hackett to Lord Sydenham," *The Black Abolitionist Papers*, 84.

[84] Abbott-Namphy, "Hackett."

[85] "7. Nelson Hackett to Lord Sydenham," *The Black Abolitionist Papers*, 85.

[86] "7. Nelson Hackett to Lord Sydenham," *The Black Abolitionist Papers*, 84, 85.

[87] "7. Nelson Hackett to Lord Sydenham," *The Black Abolitionist Papers*, 85.

[88] Stewart, "Case of Nelson Hackett."

[89] Stewart, "Case of Nelson Hackett."

[90] Stewart, "Case of Nelson Hackett," emphasis added.

[91] Stewart, "Case of Nelson Hackett," emphasis added.

[92] Abbott-Namphy, "Hackett."

[93] Zorn, "Criminal Extradition," 287.

[94] Zorn, "An Arkansas Fugitive Slave," 146, 147, 148.

[95] Abbott-Namphy, "Hackett."

[96] Stewart, "Case of Nelson Hackett."

[97] Stewart, "Case of Nelson Hackett."

[98] Stewart, "Case of Nelson Hackett."

[99] Stewart, "Case of Nelson Hackett."

[100] Stewart, "Case of Nelson Hackett."

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