

Comptes rendus / Book Reviews

Constance Backhouse — *Colour-Coded. A Legal History of Racism in Canada, 1900–1950*. Toronto: The Osgoode Society and University of Toronto Press, 1999. Pp. 485.

This book is an important addition to the growing list of publications on racism and the law in Canada. It offers six case studies involving a number of groups, Inuit, First Nations, African Canadians, and Chinese Canadians, in different jurisdictions during the period from 1900 to 1950. This work enhances our understanding of how the law and the judicial system usually helped to bolster racial discrimination, whether in legislation or in day-to-day practice. The author provides an excellent description of the legal context surrounding each case, including the specific legislation, the relevant case law, the legal process, and the character and background of the principal figures. Given that Constance Backhouse has written extensively on women and the law, it is not surprising that the discussion is particularly good when women or issues of gender are involved.

Backhouse has chosen interesting cases which give us important insights as to how racism was treated in the courts. In the first case study from the late 1930s, the federal government asked the Supreme Court of Canada to determine whether the Inuit were Indians under Canada's constitution. This question arose when collapsing fur prices devastated the Inuit economy, and Quebec refused to pay for relief on the grounds that the Inuit fell under federal jurisdiction. Characteristically, not a single Inuit was consulted on the question. Backhouse provides a very good discussion of how the lawyers for each side argued at length over the issue of racial classification. The Supreme Court justices, however, apparently ignored much of this evidence, choosing instead to examine the position of British imperial officials and Hudson's Bay Company representatives, among others, to determine if they had considered Inuit to be Indians in 1867 when the *British North America Act* was written.

The second study deals with the federal prohibition of aboriginal dance. In this case prominent white organizers of the 1902 annual summer fair in Rapid City, Manitoba, arranged for a presentation of the Grass Dance by the Oak River Dakota. This was common practice in Western Canada, as settlers were fascinated with spectacles displaying aboriginal traditions. The defendant Wanduta was singled out

for prosecution because he was a leading defender of traditional practices. Arrested and summarily tried, he was sentenced to four months' incarceration with hard labour.

The third case involved a Mohawk widow from Tyendinaga, Ontario, Eliza Sero. Sero sought damages against a white fisheries inspector who confiscated her seine fishing net in 1921, alleging that she was in contravention of both provincial and federal statutes that prohibited fishing without a licence. Sero argued that these laws did not apply to Tyendinaga Mohawk Territory, an independent and sovereign nation, and that she was not the King's subject. Apart from the 1823 Phelps case, this was the second time that the full legal argument on the question of sovereignty was considered.

The fourth case involved Saskatchewan's White Women's Labour Law. The 1912 legislation prohibited any business owned or managed by any Japanese, Chinese, or other Oriental person from employing white women, ostensibly out of concern for the latter's health and virtue. Although the law was amended in 1919 to remove all reference to ethnic or racial origins of business owners, the intent remained the same. Backhouse observes that this might be the first law to recognize whiteness overtly in Canadian law. Yee Clun, the owner of a Regina restaurant and rooming house, applied for a special licence to employ white women in 1924. Organized labour, women's groups, and whites who owned small businesses all campaigned against the application.

The fifth case is the first Ku Klux Klan trial in Canada. In Hamilton in 1930, Ontario Klan members tried to prevent an interracial marriage in Oakville by seizing Isabel Jones, a "white girl", at night and by threatening Ira Johnson, reputed to be "a Negro" (p. 173). The response of prominent black Toronto citizens prompted the Ontario attorney general to investigate and bring charges. The author is very good in explaining what laws could have been used in this case. In the end, however, only one Klan member was convicted for the minor offence of being disguised at night.

The last case involved racially segregated seating in a theatre in Roseland, Nova Scotia, in 1946. Viola Desmond, a successful black businesswoman from Halifax, was forcibly removed from the main floor section of the theatre reserved for whites and spent the night in jail. The next day she was convicted of tax fraud because the only ticket the theatre would sell her included an amusement fee one cent less than required for the main floor seating. In this case, as in many others, some whites condemned racial discrimination, reminding the reader that racism was not universal or inevitable and that greater equality was an option open to Canadians.

This book sheds important light on racism in Canada, although the title, *A Legal History of Racism in Canada*, is somewhat misleading, given that the book is based on six case studies. A more serious shortcoming is that the author provides us with a limited understanding of how notions of race changed over time. Discussing the 1939 Supreme Court decision on the status of the Inuit first, out of chronological order, seems particularly questionable in this respect. Backhouse does so on the grounds that it dealt directly with "contemporary understanding of the concept of race" (p. 17) and would thus provide a good starting point from which to comprehend the other case studies dating as far back as 1902. Towards the end of the chap-

ter Backhouse states that the classification of Inuit is still a subject of debate “today” (p. 51). This ordering of the cases limits possible discussion of the evolution of the concept of race. The author is rightly aware that definitions change over time, and it would be useful to see how concepts of race classification were used, contested, and altered in different contexts and situations, particularly as earlier concepts of race classification were being challenged in the mid-1930s by anthropologists outside Canada such as Franz Boas. That the Supreme Court case on the status of the Inuit occurred in the late 1930s is of interest precisely because it revealed how racial classification could be viewed as valid by lawyers and experts on the eve of the Second World War. Backhouse’s statement that the classification of the Inuit remains a subject of debate is even more curious given that such classification is no longer considered a legitimate area of scientific study.

In addition, it is unfortunate that there is little discussion of racism in Quebec in this book. This omission is particularly evident for the Inuit case, since it pertained to the Inuit in Quebec. This chapter includes a section on the legal definition of Indians in federal statutes, provincial legislation, and the courts, but the extensive list of examples refers almost exclusively to other provinces. Most of the material from Quebec is a description of the brief presented on behalf of the Quebec government, but there is little on the province’s history of relations with the Inuit or other aboriginal peoples. In the other case studies, while there are frequent examples from other provinces, references to Quebec are the exception.

Despite these limitations, this is a useful and interesting book. Each case is presented in a very readable manner, and the work is clearly the product of extensive research. About one-third of the book is made up of footnotes, and readers are often referred to the publisher’s web site, where even more research material is available to those with access to computer technology.

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Rainer K. Baehre, ed. — *Outrageous Seas: Shipwreck and Survival in the Waters off Newfoundland, 1583–1893*. Montreal and Kingston: McGill-Queen’s University Press for Carleton University, 1999. Pp.392.

“The Sea is made of mothers’ tears” is a proverb once frequently quoted in Newfoundland. A substantial body of literature explains why Newfoundlanders felt that way. Works including Kenneth Peacock’s *Songs of the Newfoundland Outports*, Gerald S. Doyle’s various editions of *Old-Time Songs and Poetry of Newfoundland*, and *Haulin’ Rope and Gaff*, edited by Shannon Ryan and Larry Small, establish the widespread currency of folk memories of danger and disaster on a hostile ocean. Anthologies like those by Garry Cranford and Ed Janes (*From Cod to Crab*) and Cassie Brown (*The Caribou Disaster and Other Stories*) recount sad tales of heroism, suffering, love of family, and a divine presence in the face of disaster on the frigid North Atlantic. Brown’s gripping account of the sinking of the *S.S. Florizel*,