Musk-Cats and Monkies: Africans and domestic slavery, the judicial process, and Somerset's Case in eighteenth century England

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"Musk-Cats and Monkies": Africans and Domestic Slavery, the Judicial Process, and Somerset's Case in Eighteenth-Century England.

by

J. David Kemp

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In memory of

Virginia Belle Nealy Hollingsworth
1896-1988
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Abstract

This study examines the famous trial of James Somerset in 1772 and its wider social and legal position within the black experience in the British Atlantic. Previous scholars avow either that the case ended slavery in England outright, had little effect on slaves’ social status, or caused the peculiar institution to die a slow death. Yet, this historiography fails to place Somerset within its proper cultural and legal context. By focusing on certain aspects of the judgment, this scholarship neglects the law before 1772, the social difficulties posed by slavery, or the legal arguments in Somerset in enough detail. In addition, the ensuing significance of the suit on the people of African descent throughout the empire is often slighted. This thesis argues that while Afro-Britons gained de facto, if not de jure, freedom through this ruling, abolitionist political activity and black resistance also inspired the decision of 1772 which eventually helped to end slavery throughout much of the British Atlantic.
Introduction:
The Historians and Blacks in Britain

The history of blacks in Britain did not attract scholarly attention until the second quarter of the twentieth century,¹ when historians focused on slaves’ legal status, and argued that unconditional black freedom arrived after Lord Mansfield’s sweeping judgment in the famous case in 1772 involving James Somerset (numerously spelt).² But, during the same period, legal scholar Edward Fiddes first challenged this view, arguing that, although Somerset was significant, since the verdict prohibited the forcible removal of slaves back to the colonies, certain common-law remedies still allowed a form of quasi-slavery to continue in England.³ A general history of the black presence, focusing not just on the legal condition of slaves but considering the cultural context of black-white racial relations, emerged with the publication of Kenneth L. Little’s Negroes in Britain in 1947.⁴ While Little revealed that white Englishmen had coexisted with blacks since the mid-sixteenth century, when first imported as slaves, anthropological data led him to speculate correctly that Romans had existed “side by side” with Africans in


Although he scraped the surface of such important social topics as miscegenation, racial prejudice, and resistance, much of his analysis was limited to an intensive examination of the seafaring black population in nineteenth-century Cardiff. Surprisingly, Little’s work failed to ignite broader inquiries into Britain’s black presence which, at the time of its publication, was expanding during the West Indian and African migrations of the 1950s and 1960s.

By the 1960s, however, the Cambridge group had called for a more integrative methodological approach to understanding history, and galvanized scholars to reexamine the black experience in Britain. Subsequently, several important studies charged that Somerset’s case achieved little for Britain’s slave population. According to this group of revisionists, the status of bondsmen essentially remained intact until colonial emancipation in 1833. Much like Fiddes thirty years earlier, they harped on the limits of

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5 Ibid., 165.

6 A doyen of the so-called Cambridge school, Peter Laslett prompted scholars to eschew analyses of high politics, diplomacy, and elite affairs for a “bottom-up” approach to understanding history from the perspective of the common people. See Peter Laslett, *The World We Have Lost: England Before the Industrial Age* (New York 1965).

Somerset and argued that the case had three consequences. First, it prohibited owners from forcefully selling slaves abroad. Second, it allowed slaves to take out a writ of common-law habeas corpus. Last, it left masters the residual rights to slaves, since not all of their ownership privileges had been stamped out. So, blacks continued to be transferred in or out of the realm, since masters could easily circumvent the law by means either legal, through a temporary indentureship of slaves, or illegal, by simply abducting them. Also their domestic status remained the same in England, as evidenced by continued deportations and advertisements for slaves. In F.O. Shyllon’s view, the verdict had a minimal effect because Mansfield was a weak personality who lacked the judicial independence and intellectual honesty to adjudicate the case thoroughly. Indeed, Shyllon claims that the abolitionist Granville Sharp, who changed attitudes and the law starting in the mid-1760s, was the true “unsung hero” who “challenged single-handed the accepted morality and inhumanity of the age which believed that ‘Blacks are Property.’”

Nevertheless, the focus of these so-called “new social historians” differed from that of most earlier scholars since, like Little’s, it went way beyond the legal status of blacks and gave a fuller treatment of their experience.

The “new social historians” investigated legal attitudes towards slavery in Britain, but many began to deviate from the unyielding revisionists. Some members of this group


Shyllon, Black Slaves, xi, 119.

See especially: Walvin, Black and White; Shyllon, Black Slaves in Britain, F.O. Shyllon, Black People in Britain, 1555-1833 (London 1977) [hereafter Shyllon, Black People].
reached a compromise, claiming that while Mansfield’s narrow and reluctant judgment fell short of legal or *de jure* emancipation, its impact was responsible for fanning the flames which ultimately extinguished *de facto* slavery.¹⁰ According to this third school of thought, the judgment had legal and social significance. Legally, to use Seymour Drescher’s term, it was “deadly” to slave-masters in Britain. By granting an unequivocal discharge to Somerset, it signified that they no longer had an assumed contract in slaves, effectively abolishing capital in them at home and abroad. Thus, owners could remove them from the country only as voluntary servants who had signed a contract. Moreover, further importation of slavery to England was deemed illegal because owners could no longer hide behind colonial statute law.¹¹ The decision thus provided the chance for slaves to obtain freedom. The legal effect of Mansfield’s verdict, Fryer adds,
“helped...encouraged, and to some extent protected” blacks, who seized such opportunities which caused the peculiar institution to “wither away” by the 1790s. Indeed the disappearance of slave notices in the late-eighteenth century revealed that owners had capitulated to defiant blacks who increasingly demanded wages or ran away. Afro-Briton’s had asserted “their dignity as human beings” and escaped the yoke of slavery: a gradual, cumulative process Fryer aptly calls “self-emancipation.”

Somerset’s case has thus aroused sharp historical disagreements that remain unresolved. While all three historiographical positions examine specific elements of the judgment, none of them consider the social scope of the problem, the law before 1772, or the legal arguments in Somerset in enough detail, and all ignore the subsequent impact of the decision on the empire. A more balanced picture can be obtained by looking at previous cultural and legal developments and the arguments presented by the lawyers involved in the case. Indeed the purpose here is to assess the significance of the decision by relating its rationale to the social and legal context. The first chapter examines the emergence of a black community and the place which it assumed in English society. The second traces the complex legal history of enslavement in England and the resultant confusion about the status of slaves in the eighteenth century. The third subjects Somerset’s case to detailed scrutiny and the forth considers the wider impact of the judgment in the British-American world.

11 Drescher, Capitalism and Antislavery, 38-42.

12 Fryer, Staying Power, 132, 203.
Chapter 1
The Emergence of Black Communities in Britain

Black people have inhabited Britain for almost two thousand years. For most of that time, their population was minute and scattered. However, it increased rapidly during the seventeenth and eighteenth centuries, and became an imposing, inescapable characteristic of metropolitan society. The purpose of this chapter is to trace the development of the black population in the two centuries preceding the trial of James Somerset. It sheds light on their numbers, locations, reasons for going to Britain, and the whites' response to them.

I

Although an African presence in Britain was imperceptible until the age of Elizabeth I, they far antedated her, as legionary Ethiopian troops served the Roman Emperor Septimius Severus, at Hadrian's wall in AD 200. A small number of Africans, called "blue men" by their Norse captors, arrived in Ireland in AD 862. The Stewart ruler of Scotland, James IV, and his wife, Margaret Tudor, held court before several Africans, who served primarily as musicians and entertainers. At James's annual "Tournament of the Black Lady" in June 1507 the Scottish makar (poet), William Dunbar, distinguished one in his court poem Ane Blak Moir:

Lang heff I maed of ladyes quhytt [white];
Nou of ane blak I will indytt [write]
That landet furth of the last shippis;

During the same period, the first Tudor monarch of England, and father to Margaret, Henry VII, employed a black trumpeter to play in his court. English voyages to the coast of West Africa in the mid-sixteenth century led to involvement in the slave trade. This initiated the forced importation of an uninterrupted stream of bonded Africans onto English soil. The first reported instance occurred in 1554 when five slaves arrived in London in the summer of 1554 under the auspices of merchants Sir John Yorke, Thomas Locke, and Edward Castelyn. Upon their arrival, recorded the geographer Richard Hakluyt, these “very black” people who live in “extreme hot” regions appeared “somewhat offended” by the “cold and moist air” of our country. In the next year, William Towrson took another group of Africans to London. The purpose of the visit was so that “they could speak the language” and become intermediaries between African and English slave traders. Trafficking was legal after Elizabeth sanctioned the trade in 1562. Soon afterwards, hearing that “Negroes were very good merchandise in Hispaniola...and might easily be had upon the coast of Guinea” Sir John Hawkins led a slave expedition to Africa in October of that year. He captured three hundred blacks “partly by the sword, and partly by other means” and exchanged them for “hides, ginger, sugars, and some pearls” in the Spanish Caribbean. While the Queen approved of Captain Hawkins’ first


voyage, it was reported that, upon his return in the following September, Elizabeth warned: "if any Africans should be carried away without their free consent, it would be detestable, and call down the vengeance of Heaven upon the undertaking."\(^{18}\) Hawkins failed to heed her injunctions, returned to the continent "well furnished with men to the number of one hundredth" and forcibly seized "certain Negroes...as many as we could well carry away."\(^{19}\) This second voyage left Plymouth in October 1564 and prompted one historian to lament in his *Naval History* that "here began the horrid practice of forcing the Africans into slavery," a moral abomination "which so sure as there is vengeance in heaven for the worst of crimes, will someone be the destruction of all who allow or encourage it."\(^{20}\)

During his third voyage to San Juan d'Ulloa in 1567, Hawkins' ship carried fifty-seven 'optimi generis' slaves ready to sell at £160 each. These interloping efforts, however, were frustrated during the early morning hours of 24 September when Spanish authorities sunk the English vessel and imprisoned its' crew. This setback led Elizabeth to terminate the "semi-piratical" adventures of Hawkins and discouraged others from engaging in unlicensed foreign commerce with the Spanish colonies.\(^{21}\) While the Dutch


\(^{19}\) Hakluyt, *The Principal Navigations*, vol 2, 527.

\(^{20}\) Hill's *Naval History*; quoted in Clarkson, *The History of the Abolition of the Slave-Trade*, vol 1, 41.
dominated the trade before the 1660s, following the second Anglo-Dutch War (1665-7) the next sesquicentennial witnessed British supremacy in slave-trading. When the trade ended within the empire in 1807 British vessels had shipped approximately 6.2 million Africans to plantations in Spanish America, North America, and the West Indies.\textsuperscript{22} As seamen progressively imported blacks into England during this period, their presence became visible in the capital. Many were held as concubines, while others served as prostitutes. In far greater numbers, members of the elite and even the royal family employed Africans as fashionable domestic servants, viewing them, according to James Walvin, as nothing more than “objects of curiosity.” They played no key economic role, but were simply inexpensive labor accessories “of a society anxious to add to its status by joining the fad for employing and owning black humanity.”\textsuperscript{23} Like her grandfather, Elizabeth permitted a black to serve at court and several ultimately entertained the royal household as jesters. However, in the 1590s she attempted to restrict the influx of Africans. Ostensibly, this was in response to a series of poor harvests but, as Winthrop D. Jordan argues, her motivations were also “embedded in the concept of blackness.”\textsuperscript{24}


\textsuperscript{24} Jordan argues that Elizabeth and many of her sixteenth-century English subjects equated black with such words as filthiness, sin, baseness, ugliness, evil and the devil; while, whiteness or a fair complexion, supplemented by red, was the epitome of absolute beauty and virginity. See Winthrop D. Jordan, \textit{White over Black, American Attitudes Toward the Negro: 1550-1812} (Chapel Hill, North Carolina 1968) [hereafter Jordan, \textit{White over Black}], 7-8.
letter drafted to the Lord Mayor of London on 11 July 1596 publicly indicated her
trepidation:

Her majesty understanding that several blackamoors have lately been brought into this realm,
of which kind of people there are already too many here...her majesty’s pleasure therefore is
that those kind of people should be expelled from the land, and for that purpose instruction is
given to the bearer, Edward Banes, to take ten of those blackamoors that were brought into
this realm by Sir Thomas Baskerville on his last voyage, and transport them out of the realm.
In this we require you to give him any help he needs, without fail.\(^{25}\)

Five years later, Elizabeth issued a second proclamation, expressing contempt for the
“infidels” who continued to subsist at her subjects’ expense, and immediately employed a
Lübeck merchant, Casper van Senden, to take all English blacks to Iberia, but they were
too firmly entrenched at that point and the scheme failed.

While Elizabeth’s government became hostile to the importation of blacks, their
exoticism appealed to James I and his wife, Anne of Denmark. Walvin notes that
“energetic and at times drunken vulgarity” supplanted the refined milieu of Elizabeth’s
palace. The king indulged the black presence by employing several as minstrels and
personal servants. Before his court, in 1608-09, blacks performed in Ben Johnson’s
Masque of Blackness, while ladies in waiting impersonated them by darkening their
faces.\(^{26}\) A court favorite named Robert Rich (later earl of Warwick) also performed in the
play and, on 16 November 1618, James granted him, and thirty-six other entrepreneurs
the first incorporated “Company of Adventurers” to purchase slaves in Guinea and Benin.
Although Charles I renewed the Company’s charter in 1632, there was little call for black
performers at his refined court. In contrast, Charles II presumably bought an African

\(^{25}\) Acts of the Privy Council of England, n.s. XXVI 1596-7, 16-17; quoted in Fryer,
Staying Power, 10.

\(^{26}\) Walvin, Black and White, 9.
slave for £50 and often attended the Lord Mayor’s Pageant, which regularly exhibited black performers. In 1660, following the Restoration, Charles chartered the “Royal Adventures” and gave the Company exclusive trading rights along the West coast of Africa. Competition from Dutch merchants, and an inability to repay £300,000 to creditors, effectively bankrupted the organization in 1668. Within four years, however, a newly formed joint-stock corporation called the “Royal African Company” paid £34,000 for the remaining assets of the “Adventures.” The RAC was founded so that England could supply its rising West Indian and American slave empires with labor. Charles’ brother, the future James II, was a Governor and principal shareholder in the Company. As K. G. Davies explains, his deposition in 1688 deprived the RAC of royal support since William III was a mere patron “and in no way identified...with the fortunes of the company.” Provisions in the royal charter of 1662, which apprehended interlopers who had long dogged the monopolistic trade, were “swiftly and silently” ignored by the

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29 The colonization of the West Indies and North America occurred the first half of the seventeenth century. In the Indies the British took possession of Barbados in [1605]; Saint Kitts and Nevis in [1623]; Saint Christopher and Santa Cruz in [1625]; Antigua and Montserrat and Barbuda in [1632]; The Bahamas in [1647]; Jamaica in [1655]; The so-called British West Indian plantocracy cultivated sugar—previously supplied to Europe from Brazil—and unfree slaves from Africa soon replaced free white indentured servants brought from England. The cultivation of tobacco in Virginia (from 1614) and rice in North (from 1660) and South Carolina (from 1670) increased the call for slave labor in British North America. Except for Barbados, black slaves were not used much until after 1660; they then rapidly spread in all colonies south of Maryland.

Government, and Parliament was receptive to numerous petitions demanding free trade to Africa, which led to a 1698 statute that legally ended the Company's monopoly.31

While the trade was opened to all his Majesty's Subjects, covering the coast of West Africa between Cape Blancho and Cape Mount, independent merchants were supposed to pay the RAC an *ad valorem* tax of ten percent, but their avoidance of it resulted in a suspension of the tax in 1712. Moreover, the Company was still obliged to maintain the slave trading forts on the Gold Coast, a burden which rendered it uncompetitive with other traders. Even the acquisition of a share in the *Asiento* Royal Contract under the Treaty of Utrecht in 1713, which gave exclusive rights to a limited commercial exchange with the Spanish Empire—where Britain provided 4,800 slaves a year—did not solve the problem, though the Company managed to survive until 1821.32

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31 "Whereas the Trade to Africa is highly Beneficial and Advantageous to this Kingdom, and to the Plantations and Colonies thereunto belonging: And whereas Forts and Castles are undoubtedly necessary for the Preservation and well carrying on the said Trade: And whereas the Forts and Castles now on the said Coast of Africa have been, and now are, maintained at the sole Cost and Charge of the present Royal African Company of England; towards which Charge it is most reasonable that all Persons trading to such Parts of the said Coast of Africa, as are herein after limited and appointed, should contribute; be it therefore enacted, &c. Royal African Company shall maintain, &c. all their Forts, Castles, &c. and supply the same with Men, Artillery, &c. King's Subjects as well as the said Company may trade to Africa, between Cape Mount and the Cape of Good Hope, paying 10 1. per Cent, &c. Master, &c. shall enter his Name and his Ship, &c. 15 Days before cleared from Port. Owner or Exporter to make Entry of Goods shipped on Oath, sign the Entry, and pay the Duty, &c. Master, &c. to take an Oath. On Exportation of Merchandizes from the Colonies, &c. in America to Africa, Exporter to swear that such Merchandize was imported there from England. Master and one of the Owners to give Bond, &c. for Ships sailing to Africa, &c. Officers of the Custom House to take such Bonds, and keep distinct entries, &c. Company to have a duplicate of such entries, &c. Officer to pay the Sum received deducting 5 I. per Cent. Subjects to England may trade to Africa between Cape Blacho and Cape Mount, paying 10 I. per Cent, for Goods exported, and 10 I, per Cent. On all Goods, &c. imported into England of America, from Africa, &c." 9 and 10 Will. III, c. 26 (1698).
Indeed, the triumph of free trade to Africa had financially wounded the RAC, but, more importantly, it signified a cultural watershed for English society.\footnote{Davies, The Royal African Company, 151, 152.}

While the previous seventy-year quasi-monopolistic trading period had witnessed a progressive expansion of Britain’s black population, an unrestricted mercantile exchange in human cargoes, which fully propelled Britain into the so-called “carrying trade” from Africa, led to much larger influxes of slaves. According to Clarkson, it was soon commonplace for independent ship captains “to be allowed the privilege of one or more slaves…When the cargo is sold, the sum total fetched is put down, and this being divided by the number of slaves sold, gives the average price of each. Such officers, then, receive this average price for one or more slaves, according to their privileges, but never the slaves themselves.” A practice of this sort provided extra capital for ship’s captains, and, at the same time, an outlet for the wealthy to purchase slaves. Clarkson went on to say that resident colonial planters, merchants, and government officials who returned to England customarily brought “certain slaves to act as servants” during their absentee stay or permanent retirement from plantation or public life.\footnote{In 1750 the British Government relinquished the rights to the Asiento and again the RAC was reorganized under an “Act for extending and improving the Trade to Africa” and newly directed and managed “by a Committee of nine Persons, to be chosen annually.” Where the 1698 Act had stipulated that separate traders pay an \textit{ad valorem}, the 1750 statute explicitly stated that free trade to Africa be “without any Restraint whatsoever.” The “Forts, Settlements, and Factories, &c.” remained vested in the Company, but as part of the new scheme, the RAC became a “regulated” Company, whereby individual investors traded with their own capital and “to trade in their joint Capacity” as a collective body of investors was now “prohibited.” 23 Geo. II, c. 31 (1750).}

Such trips were frequent because extreme tropical climates and rebellions by slaves, who greatly outnumbered their West...
Indian owners, left most with what Richard S. Dunn describes as a hasty desire to amass wealth and "escape home to England as fast as possible." These men, comfortable with the assistance of their African servants remained the largest importers of New World slaves until the early 1780s. An even greater influx came after this period as a result of a proclamation issued on 7 November 1775 by the royal governor of Virginia John Murray, Earl of Dunmore: "I do hereby...declare all indentured servants, Negroes, or others free, that are able and willing to bear arms, they joining His Majesty’s Troops, as soon as may be, for the more speedily reducing the colony to a proper sense of their duty, to His Majesty’s crown and dignity." Blacks did serve with the British during the American Revolution as soldiers, sailors, guides, informers, and even spies. After General Charles Cornwallis’ defeat at Yorktown in 1781, 14,000 loyalist blacks left with the British from Charleston, Savannah, and New York. Some of these went to England as servants to wealthy white loyalists, while others held the crown to its promise and petitioned for their freedom in London. Because of this large immigration, which possibly doubled Britain’s black population, absentee plantation owners from the West Indies were no longer the largest importers.

Nevertheless, for the absentee slave-owner, their blacks often faced death or sickness from the perilous transatlantic journey. Loss of life was high-priced and ill-health resulted in medical bills, which were remunerated by the master. When English

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34 Clarkson, The History of the Abolition of the Slave-Trade, vol 1, 63, 341-342n.

35 Quoted in Richard S. Dunn, Sugar and Slaves: The Rise of the Planter Class in the English West Indies, 1624-1713 (New York 1972) [hereafter Dunn, Sugar and Slaves], xv.
law permitted independent traders to enter the trade in 1698, these merchants increasingly insured their slave cargoes. Such maritime insurance covered the destruction of a vessel resulting from inclement weather, or abduction at sea by privateers, but legal technicalities often exempted the insurer from the burden of loss because of slave rebellions, or the captives' deaths by ways 'either natural, violent, or voluntary.'

Apologists for slavery nevertheless found other reasons to justify the risk and high cost of transporting slaves several thousand miles. Besides complacent familiarity with their black servants "there is...a considerable advantage by Slaves, when they are kept as domestics, because no wages are paid" while free white English domestics "are not only cloathed and boarded at the master's expense...but receive wages into the bargain." Unlike the slave-based economies in the North American and West Indian colonies, which mass-produced tobacco, rice, cotton, and sugar cane, metropolitan Britain did not have a flourishing plantation system requiring task-or-gang-slave-labor. Blacks continued to be imported primarily as fashionable domestics during the seventeenth and eighteenth centuries—a consequence of the expanded trade to the colonial plantation complex. They were a luxury, noted Edward Long, "retained in families more for ostentation than any laudable use."

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The diaries of Samuel Pepys provide a rare glimpse into the experiences of seventeenth-century black servants, in particular during the years 1662 to 1669. His journals only make superficial references to the actual duties of domestic slaves, who appeared to serve primarily as footmen, pageboys, maids, and cooks. However, he does offer fascinating, tragic, and sometimes humorous personal anecdotes which reveal the guise of blacks during the seventeenth century. On 14 February 1661, for instance, Pepys called on Sir W. Batten, whose black servant Mingo approached the door, prompting him to ask “whether they that opened the door was a man or a women?” Mingo, recalled Pepys, answered ‘a woman,’ which “with his tone, made me laugh.” The following month found Pepys and the Batten family enjoying a late night of singing, dancing and fiddling, before being joined by Mingo who did all “with a great deal of skill.” Pepys and several friends again “fell to dancing” until the wee hours, accompanied by a black named Theorbo, who played the best violin in town. W. Batelier’s “blackmore and blackmore-maid” joined them at 2 am, whereupon they all “jigged” to a “country-dance” which gave Pepys such “extraordinary pleasure, as being one of those days and nights of my life spent with the greatest content, and that which I can but hope to repeat again a few times in my whole life.” Nevertheless, Pepys’ references often discuss the deaths of blacks with indifference. In one case, he and Captain Christopher Myngs contemplated why “Negroes drowned look white and lose their blacknesse.” To this postmortem

39 [Edward Long], Candid Reflections Upon the Judgment lately awarded by The Court Of King’s Bench, In Westminster-Hall, On what is commonly called The Negro-Cause, By a Planter (London 1772) [hereafter Long, Candid Reflections], 48.

curiosity Pepys later concluded that “the removal of the epidermis by putrefaction makes the body paler, but not white.” In 1665 he observed Sir R. Viner’s “black boy” who had “died of consumption; and being dead, he [Viner] caused him to be dried in a Oven, and lies there entire in a box.” It was the plague which had left Englishmen “mighty full of fear” during the mid-1660s, a pestilence causing the remainder of black deaths which Pepys recorded.\(^4^2\) In one instance, upon hearing from Sir W. Batten that Captain Cocke’s black had succumbed to the disease, Pepys apathetically noted that “I had heard of [this] before but took no notice.” However, when Cocke showed up for dinner two days later, Pepys’ indifference suddenly turned to fear after the Captain confessed to dismissing the diarist’s earlier message urging Cocke to keep away from “his black dying.” Pepys noted that he “would have been glad [if Cocke] had been out of the house,” yet allowed his friend to stay.\(^4^3\) A final reference to blacks suggested their wide-spread presence in England as early as the 1660s, for Pepys’ observed in 1669 that “Negro servants were not uncommonly employed, especially in London.”\(^4^4\)

Some of the information from Pepys’ diaries might imply a carefree lifestyle for black servants, but, of course, bondsmen in England, while unburdened by field labor, were nevertheless frequently demeaned and demoralized by insidious minded owners, who often dressed slaves in fashionable livery and fettered them with cinched “dog” collars stamped for identification. The \textit{London Gazette} of March 1685 offered a reward

\(^{4^1}\) \textit{Diary of Pepys}, vol 9, 464.


\(^{4^3}\) \textit{Diary of Pepys}, vol 6, 214, 215.

\(^{4^4}\) \textit{Diary of Pepys}, vol 9, 510fn.
for John White, a fifteen-year-old black runaway, whose neck was severely scarred from a collar (probably a result of attempted self-removal), on which the coat-of-arms and cipher of his owner was inscribed. King William III commissioned a sculptor to hew a bust of his favorite court slave, the attire being of ribbed yellow marble, with a padlocked collar chiseled in white marble. A notice in the Daily Journal of 28 September 1728, stated that an escaped black youth could be recognized by his neck band, which read: “My Lady Bromfield’s black, in Lincoln’s Inn Fields.” Such collars were forged for the wealthy by goldsmiths like Matthew Dyer, in Duck-Lane, Orchard Street, Westminster, whose shop advertised “Silver Padlocks for Blacks or Dogs” in a 1756 edition of the London Daily Advertiser. The most desirable servants were boys and girls with darker skin, which made them appear more exotic, and, once they reached their teens, nearly all were sold back into the full rigor of colonial slavery. The following in a Liverpool newspaper, dated 20 August 1756, is indicative of the specific physical and age requirements that elites desired of their boy pages: “Wanted immediately a negro boy. He must be of a deep black complexion, and a lively, humane disposition, with good

45 Quoted in Gomer Williams, History of the Liverpool Privateers and Letters of Marque with an Account of the Liverpool Slave Trade (Liverpool 1897) [hereafter Williams, History of the Liverpool Privateers], 477.

46 The London Daily Advertiser (1756). This famous advertisement was first cited in 1897 by Gomer Williams in his History of the Liverpool Privateers. Williams and numerous modern historians only list the year and the newspaper in which the notice was placed. A comprehensive search of the filmed editions of the London Daily Advertiser for the year 1756 revealed no such advertisement. Editions 4463 [Jan 6] 4473 [Jan 17] 4496 [Feb 13] 4502 [Feb 20] and 4608 [Jun 5] are missing, while sections of 4490 [Feb 6] 4540 [Mar 12] 4547 [Mar 23] 4553 [Mar 30] and 4556 [Apr 2] are incomplete. Since the reel indicates that “this is the best copy available for filming” the advertisement was presumably carried in one of the missing or incomplete editions.
features, and not above 15, nor under 12 years of age. Apply to the printer.” 47 In the same year “Mr. J.D.” placed a notice in the London Daily Advertiser desiring “a young negro girl of about fourteen to sixteen years old. She must be as genteel as possible, and good natured.” 48 Such advertisements increasingly prompted Englishmen to condemn publicly this “evil” cadre of individuals who enslaved and exploited African children simply because it was the current social whim. “I observed lately a letter in one of the daily papers,” noted an English gentleman writing under a nom de plum, “the folly which [has] become too fashionable, of importing Negroes into this country for servants,” a practice that has “long been much talked of as a growing piece of ill policy, that may be productive of much evil.” 49 Nevertheless, while African children served as pages, or fashion-conscious owners paraded them about town on a leash and collar, most African adults worked as cooks, coachmen, footmen, valets and maids for the elite citizenship and royalty.

A few extant eighteenth-century sources contain detailed information about the experiences of slaves, and relationships with their masters. One is the diary of the Solicitor-General to the Leeward Islands, John Baker, who in 1751 at age thirty-nine started his daily journal while living in Basseterre, St. Kitts. During this period, Baker indifferently discussed violence toward slaves and their deaths from neglect or execution. For instance, on 30 July 1752, he recorded that his “negro wench Lais died at three.” In September of the following year, Baker wrote of “Mr. Warton’s negro man, Devonshire”

47 Quoted in Williams, History of the Liverpool Privateers, 474.

48 The London Daily Advertiser for Tuesday, July 20, 1756.
who had been “tried and hanged.” On 21 February 1755, he and others discovered an infant “mulatto child of Samuel Matthews, the mason” who was partially “eat[en] and killed by the rats” after being “left alone...in the night.” That summer, Baker “Gave Othello a severe whipping for lying out” and likewise “Tycho a good smart one for concealing it.” A child slave which belonged to Captain Dromgoole was thought to have “drowned in a tub of water” on the morning of 2 October 1755. However, the youngster was apparently “brought to life by lighting a pipe of tobacco and sticking the small end in its fundament, and blowing it at the bowl.” Baker’s final reference mentioned a slave named “Chocolate” who had been “thrown in the sea” following his execution. When Baker left the Indies in the summer of 1757 to settle permanently in England he was accompanied by a black servant named Jack Beef. His relationship with Beef was extensively chronicled for the next fourteen years. Baker’s treatment of him during this period presents a striking contrast to what slaves endured in the British Caribbean. The commercial importance of slaves in eighteenth-century England remained relatively insignificant. But, in the sugar colonies, plantation-owners depended on the toil of bondsmen to harvest the staple that became an economic foundation of the British Empire. In a slave society this vital source of labor needed a good dose of English discipline from plantation-owners who could suffer financially and physically from runaway or rebellious slaves. In an attempt to prevent such activity, slaves in the West Indies were given few legal rights, allowing owners to inflict quick and brutal methods of punishment. Indeed the judicial penalty of death was often handed down to insubordinate

49 The London Chronicle XXIII (1764), 317.
slaves in the British West Indies, and, to prevent owners from concealing valuable slaves who had committed capital offenses, they were always compensated for the loss of their property. Thus, although New World bondsmen like Jack Beef suffered and their debasement, or what sociologist Orlando Patterson calls “social death” continued, when they were taken to England the rule of law at least allowed for their defense in courts. In short, when faced with the alternative, they elected, in the words of an eighteenth century commentator, “a crust of bread and liberty in Old England to slavery in the West Indies.”

The chronicles of John Baker make it clear that he considered Jack Beef indispensable. He was given free rein to come and go, and by all accounts his relationship with Baker was harmonious. The diary shows that, until he was manumitted on 2 January 1771, Beef was intimately involved in virtually every aspect of Baker’s life. After returning to England on 26 July 1757, Baker visited the continent to see his daughter, was engaged as a JP for the county of Chichester, and often traveled back to St. Kitts to inspect his properties. With this hectic work schedule, along with the demands of a wife and five school-aged children, he required a number of domestics, including Beef who was his only black servant. Beef not only performed menial tasks, but also cared for the


52 See Orlando Patterson, Slavery and Social Death: A Comparative Study (Cambridge, Massachusetts 1982).
health and well-being of Baker's children. When one youngster ran away, Jack was relied on to find him. Beef also delivered money to the younger son Robert, and on 10 July 1758 "carried Tom à cheval to school." Tom was taken "ill at Eton" two years later and an indisposed Baker "sent J. Beef forward to...enquire how [he] was."54 Jack additionally rendered services for Baker's friends. On 18 October 1762, he "bottled off port-wine at Mr. Jones's." Considered an epicure, Beef frequently helped Baker's friends prepare dinner parties. For instance, he "dressed turtle demain" for Sir T. Heathcote on the night of 31 August 1763. Beef's loyalty was apparently true, and, on one occasion, he reported the intemperance of a fellow white servant: "Beef complained David went away hier, not yet returned-home drunk." Baker's account of 7 August 1770 confirms that an African community existed in the capital, for Beef attended "a Ball of Blacks" that evening.55 His servant was generously rewarded for his efforts. A horse given to Beef allowed him the luxury of venturing "out with the hounds" on numerous foxhunts. He eventually sold the stallion for "2 guineas." Baker also dressed his domestic smartly; upon arriving in England he sent the tailor to "measure of...Jack Beef for a livery," purchased a hat for him on 10 April 1760, and in 1770 toward the end of his life, Jack was given a fustian frock coat. On 7 January 1771, just five days after he was manumitted and "after a good dinner" Beef "went off and died in his sleep."56


54 Yorke, The Diary of John Baker, 111, 132.

55 Ibid., 163, 167, 181, 201.

56 Ibid., 101, 133, 206, 208.
The diary of John Baker provides the most comprehensive account of an eighteenth-century black servant in England. Other memorialists during this period offered further insights into the lives of a few blacks who achieved power and even eminence as members of eighteenth-century English society. From 1752 to 1784, Francis Barber was the black servant to unbending Tory and literary giant Samuel Johnson. Barber was born in Jamaica and taken to England in 1750 at the age of five by the West Indian planter Colonel Richard Bathurst. As James Boswell recorded, after the Colonel died and bequeathed him “his freedom and twelve pounds in money” Barber entered Johnson’s service “in which he continued...till Johnson’s death...So early and so lasting a connection was there between Dr. Johnson and this humble friend.”57 Indeed the Quaker Johnson detested slavery, and it was reported that “in company with some very grave men at Oxford” he toasted “the next insurrection of the negroes in the West Indies.” Later he commented on the hypocrisy of patriotic American “drivers of negroes” from whom “we hear the loudest yelps for liberty.”58 Indeed, during Barber’s boyhood years, he and Johnson both developed a filial relationship, but at the age of eleven the young man had grown “weary of the dullness of a lexicographical laboratory.” As a result, he left to serve an apothecary in Cheapside, leaving Johnson to lament “my boy is run away, and I know not whom to send.” Barber soon returned to Johnson, but still a “youthful desire” prodded him to fulfill “what so many boys of spirit feel an ambition to do; he ran away to sea.” Frank returned and established friendships with fellow “black brethren” in England. In

1763, the Rev. Baptist Noel Turner visited Johnson at No. 1, Inner Temple Lane and discovered that Barber and “a group of his African countrymen were sitting around a fire in the gloomy anti-room; and on their all turning their sooty faces at once to stare at me, they presented a curious spectacle.”

When Barber reached the age of eighteen, Johnson “gave a most striking proof of his affectionate regard” for him by formally educating him at Bishop-Stortford, Hertfordshire. The following letter written from London on 25 September 1770 underscores the interest Johnson held in Barber’s education:

I am very well satisfied with your progress, if you can really perform the exercises which you are set; and I hope Mr. Ellis does not suffer you to impose on him, or on yourself...Let me know what English books you read for your entertainment. You can never be wise unless you love reading. Do not imagine that I shall forget or forsake you; for if, when I examine you, I find that you have not lost your time, you shall want no encouragement from, yours affectionately.

Several years after Frank finished school, Mrs. Hester Lynch Thrale observed that he was “very well-looking, for a Black a moor” and had a reputation for being successful among the girls. “Francis has carried the Empire of Cupid farther than many Men” and while in school at Hertfordshire she was informed that “he made hay...with so much Dexterity that a female Hay Maker followed him to London for Love.” Barber later settled down and married a white Englishwoman named Betsy with whom he fathered a child. Nevertheless, during Johnson’s fatal battle with dropsy beginning in December 1783

58 Quoted in Ibid., 312.
59 Aleyn Lyell Reade, Johnsonian Gleanings II: Francis Barber the Doctor’s Negro Servant (London 1912) [hereafter Reade, Johnsonian Gleanings II], 11, 12, 15, 16.
60 Letter text in Hill, Boswell’s Life of Johnson, ii, 115-116.
Barber provided him with “constant attendance,” telling novelist Fanny Burney “with great sorrow, that his master was very bad indeed.” One year later Johnson died and bequeathed to Barber £1,500, an annual annuity of £70, and his personal papers. This infuriated Johnson’s first biographer, Sir John Hawkins, whose racist views and “malignancy of character” led to an embittered attempt at discrediting the reputation of Barber. Frank was a “loose fellow” who frequently lusted after white women, noted Hawkins. The biographer regarded his wife Betsy as “one of those creatures...with whom, in the disposal of themselves, no contrariety of colour is an obstacle.”

Like Barber, Olaudah Equiano married a white Englishwoman, and more importantly gained his freedom. An Ibo from Nigeria, Equiano and his sister were kidnapped by a slave-trader during childhood and placed in fetters. “I was much astonished and shocked at this contrivance,” his diary later indicated, “which I afterwards learned was called the iron muzzle.” The siblings were separated soon after their abduction, and Olaudah was subsequently taken from Africa to Jamaica. Rumors of white cannibalism circulated during this first leg of the Middle Passage. When the West Indian merchants and planters “put us in separate parcels, and examined us attentively” before being forcing to jump and swim ashore “we thought by this we should be eaten by these ugly men.” After “staying not above a fortnight” in Jamaica, Equiano was shipped to North America where he toiled on a Virginia plantation, often “wishing for death, rather

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than anything else." He was eventually taken to England in 1757 at the age of twelve, after which his master, a Royal Navy lieutenant named Michael Henry Pascal, renamed him Gustavus Vassa. Once he and Pascal left England, they traveled extensively before Vassa was re-sold to Captain James Doran during their journey. After traveling the globe he finally purchased his own freedom in 1766 and returned to England in 1774. Vassa published his memoirs in 1789, and galvanized the movement to end the African slave trade. In November 1786, the British Navy Board designated him Commissary to the failed Sierra Leone resettlement project for the black poor. His diary indicates how initially he resisted the appointment, “express[ing] some difficulties on the account of the slave-dealers” since he would “certainty oppose their traffic” at all costs. Ultimately the honorable Commissioners of his Majesty’s Navy “prevailed on me to consent to go” with the black poor to Africa:

Whereas you are directed, by our warrant...to receive into your charge...the surplus provisions remaining of what was provided for the voyage, as well as the provisions for the support of the black poor, after the landing at Sierra Leone, with the clothing, tools, and all other articles provided at government’s expense; and as the provisions were laid in at the rate of two months for the voyage, and for four months after the landing, but the number embarked being so much less than we expected, whereby there may be a considerable surplus of provisions, clothing, &c. these are, in addition to former orders, to direct and require you to appropriate or dispose of such surplus to the best advantage you can for the benefit of government, keeping and rendering to us a faithful account of what you do therein.66

He later petitioned the Queen, pleading “compassion for millions of my African countrymen, who groan under the lash of tyranny in the West Indies.”67 When Vassa


66 Ibid., 226, 227.

67 Ibid., 226, 231.
married Susan Cullen in 1792, the following announcement, printed in the Gentleman's Magazine, indicated the recognition and respect he had achieved: "At Soham, co. Cambridge, Gustavus Vassa, the African, well known in England as the champion and advocate for procuring a suppression of the slave-trade, to Miss Cullen, daughter of Mr. C. of Ely, in same county." Although Vassa did not live to see the "compassion" he had requested for his brethren, until his death in 1797, he continued to play a divisive political role, speaking for white as well as black abolitionists, as an intrepid proponent of the anti-slavery movement.

II

The lives of Beef, Barber, and Equiano provide historians with limited knowledge of how free and unfree Africans lived and the influence some obtained in eighteenth-century England. Kind treatment and prominence, however, were exceptional for racial prejudice was ubiquitous. When runaways or free blacks traipsed the streets of London, the elite and middle classes feared the effects their presence might have on society. Free blacks, or those who fled service, sometimes labored as riverside workers, crossing sweepers or seamstresses, but most were frequently out of work and destitute, often panhandling, stealing, and prostituting in the St Giles district of London. Iniquitous and derelict whites had occupied this area for some time before "a banditti of lazy, lawless, Negroes" who came to be known as the "St Giles blackbirds" settled and formed "crowed nests." Others crammed into cheap housing districts in Chick Lane, Field Lane, and Black Boy Alley, places which, according to the Citizen's Monitor, "constituted a

68 Gentleman's Magazine, LXII (1792), 384.
separate town or district calculated for the reception of the darkest and most dangerous enemies to society...The houses are divided from top to bottom, and into many apartments, some having two, others three, others four doors, opening into different alleys...the owners of these houses make no secret of their being let for the entertainment of thieves.”

In 1778, Philip Thcknesse commented on the increasing “number of these black men” who are “mischievous as monkeys, and infinitely more dangerous” A lengthy article published in 1764 had revealed how anxious many were of alien and inferior peoples entering their country. Writing pseudonymously in the *London Chronicle*, “Anglicanus” claimed that unemployed blacks were “fill[ing] the places of so many of our own people” and thereby “we are by this means depriving so many of them of the means of getting their bread.” He further observed that the “main object to consider” is how the “ill policy” of importing black servants into the realm could be interrupted: “It is, high time that some remedy be applied for the cure of so great an evil, which may be done by totally prohibiting the importation of any more of them, or by laying such a tax on the doing it, as may prove an effectual discouragement.”

Of course, like Queen Elizabeth two centuries earlier, the author of this tract had little concern for the hunger of his fellow Englishmen. His fear was rooted in a myth, perpetuated by

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72 *The London Chronicle*, XXIII (1764), 317.
sixteenth-century English merchants and writers who associated the indigenous African population with stupidity, indolence, violence, and debauched sexuality.

Indeed, Englishmen had been blind to color until negative racial attitudes led Yorke, Hawkins and other white men to, what Jordan terms, the "unthinking decision" to enslave Africans.\(^3\) Early descriptions contained in Hakluyt's *Principal Navigations* demeaned the appearance, character, and religion of Africans, well before they became commodities of the mercantile exchange. In 1553 Richard Eden observed that the people of Guinea are "idolatrous, without possession of any religion, or other knowledge of God." In the following year, Guineamen were similarly described as "a people of beastly living, without a God, religion or commonwealth, and so scorched and burned with the heat of the sun, that in many places they curse it when it riseth." According to Hakluyt's account of a voyage to the "dark" continent in 1554, "whore women are common: for they contract no matrimony, neither have respect to chastity," and their breasts are "very foul and long, hanging down low like...a goatee."\(^4\) Such prejudicial references, says Jordan, began a "cycle of Negro debasement" which "dynamically join[ed] hands" with the institution of slavery and "hustl[ed] the Negro down the road to complete degradation."\(^5\) Certainly, by the time Hawkins began to sell Africans, Englishmen had fully justified enslaving these "ignorant," "godless" and "monkeman like" people.\(^6\)

\(^3\) Jordan, *White over Black*, 44-98.

\(^4\) Hakluyt, *Principle Navigations*, vol 1, 84, 94, 103.


\(^6\) Hakluyt, *Principle Navigations*, vol 2, 525, 526. My evidence supports the view that racism began slavery, an institution that was ultimately indispensable to the economies of
While "Anglicanus" concealed such overt racial contempt for the black presence in England, others explicitly embraced the concept when protesting their arrival. "Scarce one in a thousand of these new negroes," complained an observer of their importation, "can count 20, or tell his fingers and toes!" The assistant agent for the Island of Barbados, Samuel Estwick, claimed that inherent in Africans were "corporeal as well as intellectual differences" which made them "irreclaimable savages." Seventeenth-century English perceptions of Africans' libidos had eventually led even Shakespeare to describe Othello as "the lascivious Moor" of Venice who pursued the "fresh and delicate" Desdemona and Caliban as the "brutish savage" spawned from "thy vile race." The alleged potent carnal appetite of Africans had also associated them with procreative encounters with apes or orang-outangs. This unnatural sexual link accounted for their "large propagators" and enabled Englishmen "to give vent to their feelings that Negroes

Britain and its colonial slave empires. American data suggesting that slavery came first can be found in the following: Carl N. Degler, Neither Black nor White: Slavery and Race Relations in Brazil and the United States (New York 1971); Edmund S. Morgan, American Slavery, American Freedom: The Ordeal of Colonial Virginia (New York 1975); Oscar Handlin, The Uprooted (Boston 1990).

77 The Gentleman's Magazine XVI (1746), 479.

78 Samuel Estwick, Considerations on the Negro Cause, Commonly So Called, Addressed To The Right Honorable Lord Mansfield, Lord Chief Justice of the Court of King's Bench, &c. (London 1772) [hereafter Estwick, Considerations on the Negro Cause], 82.

79 Mr. William Shakespeares Comedies, Histories & Tragedies Published According to the True Origionall Copies, ed. I. Iaggard and E. Blount (London 1623), Othello: 1.1 and Tempest 1.1.

80 The historian and West Indian slave owner Edward Long most commonly espoused the myth of bestiality amongst Africans and orang-outangs. See Edward Long, History of Jamaica (3 vols, London 1774).
were a lewd, lascivious, and wanton people," explains Jordan.81 When this myth was disseminated in England interracial marriage and copulation were anathema. Contamination from African blood was so feared that an eighteenth-century French commentator dismissed "an opinion commonly prevailing, that the cuticle of Negroes is white."82 In 1772, the Jamaican judge Edward Long mixed racial, social, and gender prejudice in revealing his fears that black and white mingling would ultimately tarnish the purity of English stock at every level:

The lower class of women in England, are remarkably fond of the blacks, for reasons too brutal to mention; they would connect themselves with horses and asses, if the laws permitted them. By these ladies they generally have a numerous brood. Thus, in the course of a few generations more, the English blood will become so contaminated with this mixture, and from the chances, the ups and downs of life, this alloy may spread so extensively, as even to reach the middle, and then the higher orders of the people, till the whole nation resembles the Portuguese and Moriscos in complexion of skin and baseness of mind. This is a venomous and dangerous ulcer, that threatens to disperse its malignancy far and wide, until every family catches infection from it.83

Long went on to say that racial intermarriage in England would financially burden the state since black men would "make no scruples to abandon their new wife and mulatto progeny to the care of the parish" after the "prospect of an early subsistence fail[ed]."84 His assumption that marriage and fornication occurred between the races was not unfounded. Because the population of black men in England exceeded their African female counterparts by a margin of four to one they often turned to white women for

81 Jordan, White over Black, 32.
82 The Gentleman’s Magazine XII (1742), 279.
83 Long, Candid Reflections, 48-49.
84 Ibid., 49.
marriage. Sixty white women were wives to the so-called black poor and traveled with their husbands to live in Sierra Leone during the failed 1786/7 expedition. Some modern historians still accept the claim made by Mrs. Alexander Falconbridge in 1794 that most of these white women were London prostitutes “intoxicated with liquor, then inveigled on board of ship, and married to Black Men, whom they had never seen before.” Of course, the implication was that only the lowest form of whites, further uninhibited by alcohol, could be incited into unions with blacks. Stephen Braidwood claims that Falconbridge’s account was vindictively motivated by “a grievance against the Company’s Board of Directors.” Indeed the Government would have never risked being exposed as procurers of prostitutes for these men, and the puritanical Granville Sharp, who formed and supervised the expedition, would have certainly prevented such impenitent activity.

Certainly marriage between poor blacks and whites was tolerated and unions between middle-class blacks and whites, like those of Barber and Equiano, demonstrated that, although begrudged by some, conjugality was even accepted on that social level. Yet, Gretchen Gerzina notes that elites who engaged in such behavior were considered to

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85 This estimate is based on a survey of “places wanted” advertisements in London over a two-decade period and a separate survey of London parish baptism records. See Drescher, *Capitalism and Anti-Slavery*, 28.


87 A. M. Falconbridge, *Narrative of Two Voyages to the River Sierra Leone, during the Years 1791-2-3* (London 1794), 64-65; quoted in Braidwood, *Black Poor*, 280.

88 Braidwood, *Black Poor*, 283.
have committed “a far worse sort of social transgression.” Matrimony or particularly revelations of sex with blacks led to alienation and even public ridicule for those of higher status in England. The Duchess of Queensberry, Catherine Hyde, developed an apparent sexual relationship with her page Julius Soubise. While in her service Soubise became an accomplished equestrian, fenced, played the violin, and claimed to be the son of an African prince. The eccentric duchess overlooked his extravagant spending and carnal transgressions. This relationship with her favorite “lap dog mungo” often provided fodder for satirists, and, upon her death in 1772, the *Morning Post* discussed his alleged misdeeds:

The late Duchess of Queensburry finding her dissolution approach fast, earnestly recommended her favorite black, Soubise, to the protection of the Duke. Our correspondent expresses his surprise, how the head of such a noble family should suffer a miscreant of a negro to live under his roof, spending large sums of money, and thereby enabling him to indulge the most vicious appetite that perhaps ever was implanted in the heart of a vile slave.90

Such activity even led the great anti-slave campaigner Sharp, who was later instrumental in supporting Somerset, to express concern over the black presence in England. While his treatise *A Representation of the Injustice...of Tolerating Slavery* (1769) supported the personal liberties of slaves, it also expressed fear of the effects of miscegenation: “If the present Negroes are once permitted to be retained as Slaves in England, their posterity, though Englishmen born, will be condemned of course, to the perpetual tyranny of their masters; and the mixed people or Mulattos, produced by the unavoidable intercourse with


90 *The Morning Post, and Daily Advertiser*, No 1482 (July 1777), 2a.
their white neighbors, will be also subject to the like bondage with their unhappy parents.\(^9^1\)

Any marital or sexual union between black women and male elites was also considered the pinnacle of social folly. Nevertheless, like white mistresses who engaged in that sort of activity with their black servants, Englishmen often visited the beds of African females. Plantation owners in the West Indies were notorious for keeping concubines, since the distant removal from life in England, along with a dearth of whites in the islands, allowed for such relations.\(^9^2\) But in England, where the slightest hint of sexual involvement with blacks destroyed reputations among the upper classes, more discretion was required. The numerous black brothels of London provided privacy for such patrons. Like their white counterparts who far outnumbered them, black women were forced into prostitution out of economic desperation. A former Caribbean slave who went by the sobriquet “Black Harriot” was procuress to the most notorious black brothel in London. This meretricate Jamaican was purchased on the coast of West Africa, and taken to England by a plantation-owner with whom she had two children. Despite being left destitute upon his death, she became self-educated and eventually started a bordello where it was anxiously reported that, of her seventy clients, twenty were peers.\(^9^3\)

Authority figures who exhibited hostility towards interbreeding and vagrancy also viewed black Londoners, observes Fryer, as part of the lower-class “lawless and furious rabble.” The Jacobite risings in 1715 and 1745 along with the popular support for John


Wilkes in the 1760s and 1770s unsettled the elite. The so-called working-class “mob” who were responsible for the Wilkite riots viewed “black people as fellow victims of their own enemies.” London was the locus of black resistance and by the 1760s, many feared an Anglo-African alliance that might battle “against a system that degraded poor whites and poor blacks alike.” Peter Linebaugh and Marcus Rediker argue that the “Wilkes and Liberty” movement augmented a transatlantic proletarian insurrection in which multi-ethnic sailors, slaves, and indentured servants formed anti-impressment mobs and joined forces to demand higher maritime wages and fewer hours in both America and England. In 1768, “sturdy boys and negroes” successfully fought against impressment in Boston’s Liberty Riot, and, in the same year, a contemporary observer in London noted that underpaid and overworked “wretches of a mongrel descent...immediate sons of Jamaica, or African Blacks” assisted their white counterparts in dismantling vessels during the river strike. Even before this conglomerate of insurgents or “many-headed hydra” revoluted, counterattacks by colonial black slaves had been prevalent since the 1730s. There were numerous slave insurrections in the West Indies, and a violent rebellion at Stono in the North American colony of South Carolina. Frequent articles from Jamaica reported on the “rebellious Negroes” who increasingly

93 Fryer, Staying Power, 76.

94 Ibid., 72.

formed maroon societies in the Caribbean foothills. The caption from one such article featured a speech from freedom-fighter Moses Bon Saám that read “this is a Black, beware of him good Countrymen,” and, by 1760, the frustrations of Jamaican slaves peaked in Tacky’s Revolt, leading to sixty white and several hundred slave deaths. The following article in the *Gentleman’s Magazine* for October 1764 illustrated that such activity inspired like fears in England since its black community increasingly resisted slavery and racism:

The practice of importing Negroe servants into these kingdoms is said to be already a grievance that requires a remedy, and yet it is every day encouraged, insomuch that the number in this metropolis only, is supposed to be near 20,000; the main objections to their importation is, that they cease to consider themselves slaves in this free country, nor will they put up with an equality of treatment, nor more willingly perform the laborious offices of servitude than our own people, and if put to it, are generally sullen, spiteful, treacherous, and revengeful. It is therefore highly impolitic to introduce them as servants here, where that rigour and severity is impracticable which is absolutely necessary to make them useful.

96 “From Jamaica, That the run-away Negroes are become very troublesome, having taken a Town in the Mountains which had been forced from them.” *Gentleman’s Magazine*, III (1733), 329. “From Jamaica, That the Negroes were in Rebellion, and had killed several white People; but had been driven into the Mountains by of Body of Sailors sent against them, after a sharp fight; wherein were killed 40 of the former, and 11 of the latter.” Ibid., III (1733), 606. “By a Letter from St. Christopher’s ‘tis advised, that the Negroes of St. John’s had rose and cut off every one of the Whites their masters; but that the Militia of St. Thomas had re-taken the Fort, and driven the Negroes into the woods.” Ibid., IV (1734), 48. “From Jamaica, March 22, that the rebellious Negroes about port Antanio, on the north of that Island, were much increased, by the revolt of 10 or 12 together from their masters, that they have destroyed several plantations and estates, that besides what arms and ammunition some time ago they took from the soldiers and sailors, ‘tis feared, they are privately supplied by the Spaniards from Cuba.” Ibid., IV (1734), 277. “From Jamaica, That the Negroes desert daily, and are becoming so numerous and well fortified in the mountains, that the chief town is impregnable.” Ibid., IV (1734), 510.

97 *Gentleman’s Magazine*, V (1735), 21.

98 *Gentleman’s Magazine*, XXIV (1764), 493.
This problem of recalcitrance and lack of deference on the part of blacks was a concern repeated nearly verbatim in the *London Chronicle*. “Negroes do not certainly consider themselves to be slaves in this country,” complained “Anglicanus.” Their brazen attitudes, the author continued, leave them unwilling to “put up with an inequality of treatment: and to suppose them preferable to the point of service, can by no means be allowed, nor can their tempers recommend them to our superior regard; for it is their general character to be spiteful, sullen, and revengeful.”

Long complained that “upon arriving in *London*” African servants bond with “a knot of blacks” who abscond and “repose themselves here in ease and indolence, and endeavor to strengthen” their lot by seducing as many of these strangers into the association as they can work to their purpose. Not infrequently, they fall into the company of vicious white servants, and abandoned prostitutes of the town; and thus are quickly debauched of their morals, instructed in the science of domestic knavery, fleeced of their money, and driven to commit some theft or misdemeanor, which makes them ashamed or afraid to return to their master.

This contempt came not only from the anonymous and those known to loathe blacks, but also from respectable members of English society. The eminent London magistrate Sir John Fielding whom many slaveowners appealed to for the return of their servants also feared the influence of so-called jobless and mulish blacks. In his *Penal Laws*, published in 1768, Fielding pronounced that free blacks and fugitives soon “put themselves on a footing with other Servants, become intoxicated with Liberty, grow refractory” and ultimately demand “Wages according to their own Opinion of their Merits.” He continued by saying that numerous blacks exhibited such anger that owners fearfully discharged them. Soon afterwards they entered “into Societies” and obtained “the Mob

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100 Long, *Candid Reflections*, 47.
on their side” making it “not only difficult but dangerous to the Proprietors of these Slaves to recover the Possession of them, when once they are spirited away.”101

III

Although the majority of Britain’s black population lived in London, many resided in Liverpool and Bristol. Fifty percent of the eleven thousand slaving vessels traveling from England to Africa during the eighteenth century left from Liverpool.102 Indeed once the monopolistic era gave way to free trade the city eventually became the main hub where Africans were bought and sold. “Busts of blackamoors and elephants, emblematical of the African trade” ornamented the Town Hall, and the following items required for a typical slaving voyage to Guinea—auctioned at the Merchants’ Coffee-house in 1756—underscored Liverpool’s heavy involvement:

One iron furnace and copper, 27 cases with bottles, 83 pairs of shackles, 11 neck collars, 22 handcuffs for the traveling chain, 4 long chains for the slaves, 54 rings, 2 traveling chains, 1 corn mill, 7 four pound basins, 6 two-pound basins, 3 brass pans, 28 kegs of gunpowder, 12 cartouches boxes, 1 iron ladle, 1 small basket of flints...one large negro hearth with two iron furnaces, 1 copper ditto for 450 slaves, 1 decoction copper kettle, ditto pan, a pair of shackles, chains, neck collars, and handcuffs, 1 iron furnace, 245 gallons, with a lead top, sufficient to boil 10 barrels of liquor.103

Because of the trade, a distinct black community existed in the city throughout the eighteenth and nineteenth centuries. Most of the several thousand slaves employed by the wealthy in Liverpool had been purchased at a notorious auction block called “Negro Row” or on the steps of an establishment known as the “Custom House.” Included in one auctioneer’s bill of sale were “twelve pipes of raisin wine, two boxes of bottled cyder,

101 Sir John Fielding, Extracts from such of the Penal Laws, as Particularly relate to the Peace and Good Order of this Metropolis (London 1768), 144.

102 David Richardson, “Liverpool and the English Slave Trade,” undated article., 73.
six sacks of flour, three negro men, two negro women, two negro boys, and one negro girl." The following from Williamson's Liverpool Advertiser in 1765 was typical of many advertisements for such sales:

To be sold by auction at George's Coffee-house, betwixt the hours of six and eight o'clock, a very fine negro girl about eight years of age, very healthy, and hath been some time from the coast. Any person willing to purchase the same may apply to Captain Robert Syers, at Mr. Bartley Hodgett's, Mercer and Draper near the Exchange, where she may be seen till the time of Sale.\textsuperscript{104}

In addition, free blacks resided in Liverpool and, by the 1780s, as many as fifty West African schoolchildren were sent by chieftains to be educated in hamlets surrounding the city.\textsuperscript{105} While most were sons shipped abroad to become middlemen in the slave trade the abolitionist Thomas Clarkson encountered an "enterpretess to the slaves" during his stay there in 1787.\textsuperscript{106} Free black sailors settled around the docks of Liverpool in substantial numbers during the late eighteenth century. Recruited after British mariners succumbed to tropical maladies during slave expeditions to the West Coast of Africa, these seamen returned as employees of the Elder Dempster shipping company. Rather than go back light-handed, the slave captain often hired West Africans as replacements. The company employed many black seamen in the following century, and, in 1878, erected additional living quarters at the corner of Stanhope Street and Park Place. This working association with Africans, argues Mike Boyle, was imperative in developing a black settlement in Liverpool.\textsuperscript{107}

\textsuperscript{103} Quoted in Williams, History of the Liverpool Privateers, 473fn.

\textsuperscript{104} Ibid., 474, 476.

\textsuperscript{105} Fryer, Staying Power, 60.

\textsuperscript{106} Clarkson, The Abolition of the Atlantic Slave-Trade, vol 1, 399.
Bristol was second in wealth only to London by the eighteenth century, and its fortunes were also rooted in the international slave trade. Celtic slaves had been shipped from the city across the St. George's Channel to Ireland in 1066. The Bristol mercantile elite dominated the later commercial exchange in slaves from Africa, sugar from the West Indies, and tobacco from Virginia, until eclipsed by Liverpudlian traders in the 1750s.\textsuperscript{108} The affluent in Bristol had black servants like their counterparts in London and Liverpool, and coffeehouse auctions calling for the sale of African boys and girls were prevalent. One advertisement from a Bristol man, entitled “Horses, Tim Wisky, and Black Boy,” offered for sale an excellent Tim Wisky “little worse for wear, &c” afterwards “a Chesnut Gelling” and finally a black youngster who lately “had the small-pox, and will be sold to any Gentleman.”\textsuperscript{109} There were also a number of black runaways, and by the 1750s, advertisements for fugitives like this one in \textit{Felix Farley's Bristol Journal}, were commonplace:

Run away from Capt. Edward Bouchier, at Keynsham, a NEGRO LAD, about 18 Years old, 5 Feet 8 Inches high, remarkably well-proportion'd, talks English very imperfect, and answers to the Name of Cato; had on when he went away a brown Coat turn'd up with red, Plad Waistcoat and Leather,Breeches-Any Person giving Intelligence of the said Black, so as he may be had again, to Mr. J. Bridges, Attorney, without Lawford’s Gate, Bristol, or to the Printer hereof, shall receive one Guinea Reward & all reasonable Charges.\textsuperscript{110}

One week after this announcement a reward of one guinea was also offered by the counsel of Master Captain James Pollock for the return of an eighteen-year-old escapee

\textsuperscript{107} Mike J. Boyle, “Slave City First,” lecture presented for the IXth International Congress of Maritime Museums Proceedings, 1996, 109-116. I would like to thank Brian Refford for bringing this article to my attention.

\textsuperscript{108} Richardson, “Liverpool and the English Slave Trade,” 73.

\textsuperscript{109} \textit{The Gazetteer} 18 April (1769); quoted in Sharp, \textit{A Representation}, 88.

\textsuperscript{110} \textit{Felix Farley's Bristol Journal}, VI (1757), 3b.
named Starling who “blows the French Horn very well.”\textsuperscript{111} While reading much the same as the preceding advertisement, this claim admonished those who provided succor to runaway slaves: “Whoever shall harbour or conceal the said Black, will be prosecuted as the Law directs.”\textsuperscript{112} Such a statement suggests a collective resistance by free Africans in Bristol. A black subterranean movement was doubtless fueled by anti-slavery articles in the \textit{Gentleman’s Magazine} that admonished Bristol merchants who “answer to the Devil” when dealing in men, women, and children for “Power and Riches.”\textsuperscript{113} Popular opposition to the institution, says Douglas Lorimer, increasingly allowed slaves to runaway with little difficulty and locate “refuge among an established community of free blacks” or receive help from fellow white servants.\textsuperscript{114} The substantial free African community in Bristol nevertheless included a number of sailors whose poor treatment rivaled that of their enslaved counterparts. During his campaign to abolish the slave trade Clarkson frequently visited Bristol and reported on the appalling practices these black

\textsuperscript{111} Apparently a number of blacks in eighteenth-century England were horn-blowers. The Earl of Albemarle’s slave “flourished” with the French Horn while the Earl of Chesterfield’s black servant “Cato” was alleged to “blow the best French Horn and Trumpet in England” noted a contemporary source. Since both owners resided in the northern shires of England this led one writer to investigate the existence of black slaves in the English countryside. His research uncovered a number of country estates which held black servants. Thus while the bulk of both free and unfree blacks lived and labored in the port cities of London, Liverpool and Bristol their presence was scattered throughout bucolic regions of England. See G. Bernard Wood, “A Negro Trail in the North of England” \textit{Country Life Annual} (1967), 41-43.

\textsuperscript{112} \textit{Felix Farley’s Bristol Journal}, VI (1757), 3a.

\textsuperscript{113} \textit{The Gentleman’s Magazine}, X (1740), 341-342.

seamen endured. When he arrived in the city on horseback\textsuperscript{115} the crusader often trembled and "questioned whether [he] should even get out of it alive" for many in Bristol depended on the trade:

The owners of vessels employed in the trade there, forbade all intercourse with me. The old captains, who had made their fortunes in it, would not see me. The young, who were making them, could not be supposed to espouse my cause, to the detriment of their own interest. Of those whose necessities made them go into it for a livelihood, I could not get one to come forward, without doing so much for him as would have amounted to bribery.\textsuperscript{116}

However not all of his efforts were frustrated since he exposed a ship's captain who pinned an African crewman named John Dean to the deck and "poured hot pitch upon his back" making "incisions in it with hot tongs." Clarkson later established ties with prominent Quaker families who helped create a Bristol committee to end the slave trade.\textsuperscript{117}

IV

While the black communities of London, Liverpool, and Bristol had expanded significantly by 1700, contemporaries did not estimate their numbers until 1764 when the \textit{Gentleman's Magazine} speculated that almost 20,000 "Negroe servants" occupied the capital alone.\textsuperscript{118} Lord Mansfield reckoned that 14,000 or 15,000 black "men" inhabited London at the time of \textit{Somerset case}.\textsuperscript{119} In 1772, the assistant agent for the Island of Barbados, Samuel Estwick, proposed that 15,000 "negroes" were in England for "scarce

\textsuperscript{115}When Clarkson promoted the anti-slavery cause in England during the years 1787 to 1792 he traveled a total of 33,000 miles on horseback.

\textsuperscript{116}Clarkson, \textit{The History of the Abolition of the Slave-Trade}, vol 1, 293-294, 344.

\textsuperscript{117}Ibid., 298-299, 366.

\textsuperscript{118}\textit{Gentleman's Magazine}, XXIV (1764), 493.
is there a street in London that does not give many examples of that."\textsuperscript{120} Fellow slave lobbyist Edward Long estimated that 3,000 of "them" were now in the British Isles and consequently "three thousand white subjects left to seek their bread." Long increased his appraisal to 15,000 upon the publication of Estwick's work: "My reader, I hope, will excuse my having stated their number so low...this I did for want of information on that head, as well as from an unwillingness to commit any thing like exaggeration."\textsuperscript{121} Of course, this was an insincere apology since Long was quite willing to concur with higher figures to frighten those opposed to a heavy black presence inside the realm. The plantation-owner Estwick cautioned that, if Africans gained freedom in the mother country, the trade to America would be "diverted from Africa to England" and "fatal consequences might follow."\textsuperscript{122} Long noted that while owners brought in slaves "upon motives of absolute necessity" for "the public good of the kingdom...some restraint should be laid on the unnatural increase of blacks imported into it."\textsuperscript{123} In 1783 the West Indian abolitionist Gilbert Francklyn—accounting for the recent influx of loyalist black Americans—more than doubled Long’s projection and placed the minimum black population in the capital at 40,000.\textsuperscript{124} While political and racial motivations led to inaccurate estimates of the number of black inhabitants in Britain, calculations also

\textsuperscript{119} 20 Howard St. Tr. 1 at 79.

\textsuperscript{120} Estwick, \textit{Considerations on the Negroe Cause}, 94.

\textsuperscript{121} Long, \textit{Candid Reflections}, 51, 75.

\textsuperscript{122} Estwick, \textit{Considerations on the Negroe Cause}, 92.

\textsuperscript{123} Long, \textit{Candid Reflections}, 46.
suffered from a failure to distinguish between the total of free and unfree blacks, since a population census was not taken until 1801. Nevertheless several modern historians place the total number of blacks at the time of Somerset's case in the middle of contemporary estimates, at 10,000 out of a national population of about eight million (.00125%).

Some have based their estimates on advertisements for the sale or return of fugitive slaves, and more recently, others have used parish baptism registers for London and colonial records indicating the number of blacks imported from Jamaica. Shyllon claims that poor treatment and living conditions prevented the black population from ever exceeding 10,000. Fryer suggests that importation continually bolstered their averages throughout the eighteenth century. There is no sure answer to the population question, but the national total certainly increased in conjunction with the eighteenth-century slave trade. This left once exotic African servants out of work and poor as the fashion-conscious elite found them pedestrian and thus unappealing. It has been shown that black communities developed and prominent Africans like Barber and Equiano formed networks with both races. Some disgruntled black slaves increasingly demanded wages,

124 Gilbert Francklyn, An Answer to the Rev. Mr. Clarkson's Essay (1789); quoted in Drescher, Capitalism and Antislavery, 28.

125 Braidwood, Black Poor, 23; Linda Colley, Britons: Forging the Nation 1707-1837 (New Haven 1992), 352; Drescher, Capitalism and Antislavery; 28; Fryer, Staying Power; 68; Shyllon, Black People, 10, 18, 102; Walvin, Black and White, 46.


127 Shyllon, Black People, 102.

128 Fryer, Staying Power, 67.

129 Walvin, England, Slaves, 47.
in which case they were often manumitted, or entered into an agreement of indentured servitude. Others resisted bondage by absconding—like their West Indian counterparts—whereupon they would eventually appeal to the English legal system for freedom.

V

Africans first arrived when Britain was the Roman province of Britannia. They intermittently trickled into the British Isles as free settlers and slaves. Early racial attitudes eventually catapulted England into the so-called “triangular” trade in human cargoes. It has been shown that Britain’s African community emerged as a result of the growth of the slave trade during the seventeenth and eighteenth centuries. Some of its members obtained respectability and even influence, but most were consigned to servitude and poverty. While their overall numbers remained relatively small, blacks were threateningly concentrated in a few urban areas, especially in the capital, and thus were considered a festering blister on the skin of English society. Eurocentric misconceptions, and an obsession with racial purity, had in part underlined such hostility since the Elizabethan period. Nevertheless, parliament had not successfully legislated slavery in England, although the institution was unambiguously sanctioned in most

130 It was commonplace in eighteenth-century England for whites—in particular Londoners—to enter into periods of indenture for anywhere from four to seven years. Advertisements like the following offer evidence that former black slaves also negotiated such arrangements: “Run away on Wednesday, the 28th ult., and stole money and goods from his master, John Lamb, Esq., an indentured black servant man about twenty-four years of age named William, of a brown or tawney complexion.” Quoted in George, London Life, 136-137.
British colonies. As blacks became more visible in England this legal discrepancy created complex judicial problems that will be examined in the next chapter.

131 The English parliament sanctioned the trade and granted the American and West Indian colonies the right to property in slaves in three separate statutes: “Whereas the Trade to Africa is highly Beneficial and Advantageous to this Kingdom, and to the Plantations and Colonies thereunto belonging...Subjects to England may trade to Africa between Cape Blacho and Cape Mount. 9 and 10 Will. III, c. 26 (1698). “And be it further enacted by the Authority aforesaid, That...the Houses, Lands, Negroes, and other Hereditaments and real Estates, situate or being within any of the said Plantations belonging to any Person indebted, shall be liable to and chargeable with all just Debts, Duties and Demands of what Nature or Kind soever, owing by any such Person to his Majesty, or any of his Subjects.” 5 Geo. II, c. 7 (1732). “Whereas the Trade to and from Africa is very advantageous to Great Britain, and necessary for the supplying the Plantations and Colonies thereunto belonging with a sufficient Number of Negroes...the said Trade ought to be free and open to all his majesty’s Subjects: Therefore be it enacted...That it shall and may be lawful for all his Majesty’s Subjects to trade and traffick to and from any Port or Place in Africa.” 23 Geo. II, c.31 (1750).
Chapter II
English Law and Domestic Slavery before 1772

The growth of black communities in England from the sixteenth century heightened fears of social pollution from an inferior human race, and created hostility in the white population. As has been shown, such anxieties stemmed partly from the growing number of wanton free blacks. It was also a response to the resolute actions of de facto slaves who increasingly challenged their ambiguous servile status in the courts. This chapter discusses, in turn, the numerous legal actions involving slaves leading up to Somerset's case, all of which repeatedly failed to determine their lawful condition in the British Isles.

I

Sixteenth-century Englishmen were not the first to envision the concept of human bondage in the British Isles, for slavery existed during the Roman occupation, and was an integral part of the Anglo-Saxon social structure. The lower-class Roman humiliores, for example, were often subjected to forced labor in British lead-mining areas for criminal offenses. Anglo-Saxon England witnessed similar legal punishments, and, even the lowest class of freeman, or ceorl, was generally a slave-owner. Doomsday Book listed twenty-five thousand servi and ancillae, male and female slaves, who, says F.M. Stenton, were "regarded as part of the equipment of the lord's demesne." Indeed, the Anglo-Saxon monarcies even engaged in the slave trade, whereby Celtic prisoners of war,

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captured in western Britain, were shipped between Bristol and Dublin.\textsuperscript{134} Nevertheless, it is generally thought that, after 1066, chattel slaves gradually vanished by 1200 and were replaced by villeins,\textsuperscript{135} once the conquering Norman ruling elite reorganized the estates of their Anglo-Saxon predecessors. The status of these bonded tenant farmers was clear, for while they were obliged to pay high rents to their landlords, and their legal grievances were decided at the mercy of the lords’ manorial courts, law or custom restricted their labor obligations.\textsuperscript{136} Though the villein was reliant upon the wishes of his feudal lord, says Jordan, unlike future New World slaves, this “by no means” denuded all of their “social and legal rights.”\textsuperscript{137} Moreover, villeinage was local and immemorial, often remaining in the bloodline of the same family, while African slaves, noted Sharp, emerged “from a very different source, and therefore heredity right by descent is excluded.”\textsuperscript{138} In other words, the institution was not regional, but emerged from Africa, whose natives, once captured and forced to England, could be sold outside of a specific ancestry.

\textsuperscript{134} Thomas, \textit{The Slave Trade}, 32.

\textsuperscript{135} “A villein in gross was affixed to the person of his lord and transferable by a deed or confession from one owner to another. A villein regardant was affixed to the manor of land.” Bryan A. Garner, ed. \textit{Black’s Law Dictionary}, 7\textsuperscript{th} ed. (St Paul, Minn 1999) [hereafter Garner, \textit{Black’s Law Dictionary}], 1563.

\textsuperscript{136} Emory Washburn, “Somerset’s Case,” 310.

\textsuperscript{137} Jordan, \textit{White over Black}, 49.

\textsuperscript{138} Sharp, \textit{A Representation}, 133.
Increasingly, villeins began to abscond in the thirteenth century, and some became manumitted copyhold tenants, while others obtained freedom by proving they were Christians—an ecclesiastical rule endorsed by William the Conqueror. Others acquired a certification of bastardy through a legal fiction, which could procure their freedom since villeinage was hereditary and passed through the paternal line. Nevertheless, many of these villeins ended up roaming the highways and villages, begging without license and allegedly spurning work. The government's intolerance of such activity is evidenced by the passage of numerous statutes designed to punish able-bodied beggars and people who assisted them. Incensed by a recent poll tax, the peasant's revolted in 1381, demanding, among other things, that serfdom be abolished. This prompted Richard II to award commissions "to inquire of and punish the misbehavior of villeins and land tenants." Such legislation failed to check the so-called "masterless men" who incited fear into a skittish medieval society. The Tudors were particularly concerned about the problem and even re-introduced domestic slavery. A statute passed in 1547 declared all loiterers and idle persons who refused work for three consecutive days to be

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139 "The tenant (speaking of copy-holders) was anciently a bondsman, and his tenures; but time hath changed both, and now, he and his estate both are so far free, that if he pay his rents, and do his services according to the custom of the place, the lord cannot hurt him or his estate." William Sheppard, *The Court-Keeper's Guide* (London 1654), 96; quoted in Sharp, *A Representation*, 120-121.

140 5 Ed. I, c. 3 (1277); 14 Ed. I, c. 4 (1286); 18 Ed. I, c. 3 (1290); 39 Ed. I, c. 4 (1311); 23 Ed. III, c. 7 (1349); 12 Rich. II, c. 7 (1388); 19 Hen. VII, c. 12 (1528); 27 Hen. VIII, c. 25 (1536).

141 1 Rich. II, c. 6 (1379).
marked with a hot iron in the breast, the mark of V. and adjudge the same person living so idle, to such presenter, to be his slave, to have and to hold the said slave unto him, his executors, or assigns for the space of two years then next following, and to order the said slaves as follows; that is to say, to take such person adjudged a slave with him, and onely giving the said slave bread and water, or small drink, and such refuse of meat as he shall think meet, cause the said slave to work by beating, chaining, or otherwise, in such work and labor (how vile so ever it be) as he shall put him unto. 142

According to Blackstone, it was quickly determined that “the spirit of the nation could not brook this condition, even in the most abandoned rogues” and the act was “utterly repealed, made frustrate, void, and of none effect.” 143 A common-law court decision in 1569 contained in the Plea Rolls and the Yearbooks confirmed that slavery was repugnant to the laws of England. One Cartwright had brought a slave from Russia and “it was resolved, That England was too pure an Air for Slaves to breath in,” but apparently not for unfree blacks, who were increasingly imported into England during the early Jacobean period—just as villeinage was dying out. 144 Indeed, when the status of bonded Africans was first questioned, a slave’s defense usually declared that villeinage had expired 145 and pointed to the fundamental differences between the old feudal system

142 1 Ed. VI, c. 3 (1547).

143 Sir William Blackstone, Commentaries on the Laws of England I (Oxford 1765) [hereafter Blackstone, Commentaries I], 412; 3 & 4 Ed. VI, c.16 (1549).

144 John Rushworth, Historical Collections, II (London 1680), 1, 468; quoted in 20 How. St. Tr. 1 at 51. In 1637 the managers of the Commons cited Cartwright’s case during the impeachment trial of Star Chamber judges who ordered political reformer John Lilburne to be imprisoned “whipped, pilloried, and fined.” 20 How. St. Tr. 1 at 51. This was apparently instrumental to Lilburne’s defense since he was acquitted and the judges were impeached. Because Cartwright’s case was used in the defense of Lilburne and not for enslaved blacks subsequently brought to England one can only assume that the slave brought from Russia was of European and not African origin.

145 The last reported case involving villeinage was Pigg v. Caley (1618) which placed restrictions on the time a lord had to reclaim his absconded villein. Chief Justice Hubbard stated “if a man hath not seisen of a villein in grosse within 6 years, he shall be barred by
and contemporaneous African slavery. Yet, Emory Washburn notes that because villeinage was never abolished by common law, "the notion that one man might have a property in another" continued to be defended by advocates of slavery "long after its practical abrogation by the omnipotence of public sentiment."  

II

Those forced into bondage in the British Isles prior to the late sixteenth century were conquered individuals, coming from diverse ethnic backgrounds, who often held a variety of religious beliefs and ideologies. In the modern form of slavery, although ethnic and racial differences played a more obvious role between Europeans and West Africans, the English writers and merchants who first traveled to Africa were pre-conditioned to be intolerant toward the "different," and therefore fully-prepared to engage Britain in a new type of racial slavery. However, African slavery was never intended to be a domestic institution in England, unlike feudal villeinage, for although Englishmen eventually

32 H. 8. Of limitation, in nativo habendo, [about a serf to be held] for liberty is granted." By the time of James I the common law increasingly favored the rights of runaway serfs. Pigg v. Calley, 1 Noy 27 (1618), 997.

146 Emory Washburn, “Somerset’s Case,” 312.

envisioned colonial slave societies drawing their wealth from the toil of black labor, the
development of a slaveowning country in England was a fortuitous “by-product” of the
trade to the colonies. 148 Inevitably, just as villeins had obtained a baptism, fled, or
appealed to the legal system to secure their freedom, once the African slave population
swelled from the late seventeenth century on, these blacks increasingly sought
emancipation through similar avenues. Owners soon protested against “the quirks of
Negro solicitors, and the extra-judicial opinions of some lawyers” who defended
absconded blacks, and quickly responded by seeking redress for loss of their slaves’
services. 149 However, the resultant verdicts were often narrow or unresolved, and by no
means consistent for either side. Parliament had never deliberated the issue, but
heightened pressure from pro-slavery members prompted senior governmental legal
advisors—Attorney General Philip Yorke (later lord chancellor Hardwicke) and Solicitor
General Charles Talbot (later Baron Talbot)—to champion an influential extra-judicial
opinion in 1729 which seemingly upheld the proprietary claims of absentee planters.
Nearly four decades later, the House of Commons and Lords contained “upwards of forty
members who are either West-India planters themselves, descended from such, or have
corns there that entitle them to this pre eminence” noted an editorial in the
Gentleman’s Magazine. 150 With such influence from the political and legal communities,
the opinions or judicial verdicts supporting slavery received widespread attention. But,
lacking an organized anti-slavery lobby, the decisions benefiting blacks received scant

148 Walvin, England, Slaves, 32.

149 Long, Candid Reflections, 46.
publicity or were ignored altogether. A brief survey of the pre-1772 judgments affecting
blacks illustrates how the English courts grappled with the paradox of slavery and
freedom for two centuries because.

III

When the status of African slaves first became an issue in English courts, neither
custom nor positive law provided foundations for New World slavery. Yet, Chief
Justice of the Court Of Common Pleas, Sir Edward Coke, concluded in Calvin's Case
(1609) that all "infidels are in law perpetui inimici, perpetual enemies for between them,
as with the devils, whose subjects they be, and the Christian, there is perpetual hostility,
and can be no peace."151 In Estwick's words, this maxim established that infidel Africans
"purchased when captives of the nations with whom they are at war" were consequently
slaves by the rules of the jus gentium.152 Private traders secured the custom of slave
trading and gradually endorsed its regulation through royal grants, international law and
letters patent: legal principles which led courts to view seized blacks as commodities and
allowed actions of trover.153 The first such case was Butts v. Penny (1677), in which the

150 Gentleman's Magazine XXXVI (1766), 229.

151 Calvin's Case, 7 Co. Rep. (1609), 397.

152 Estwick, Considerations on the Negro Cause, 66-67. "The jus gentium...provided
simplified rules to govern the relations between foreigners, and between foreigners and
citizens...The progressive rules of the jus gentium gradually overrode the narrow jus
civile...which...in early Roman law...was formalistic and hard and reflected the status of
a small sophisticated society rooted in the soil. Malcolm N. Shaw, International Law 15
(1997); quoted in Garner, Black's Law Dictionary, 865.

153 "In common law practice the action of trover or conversion lay for the recovery of
damages against the person who had found another's goods and wrongfully converted
them to his own use. An unauthorized assumption and exercise of the right of ownership
plaintiff issued a suit of trover in the Court of King’s Bench for the return of ten slaves.\textsuperscript{154} Butts’ argument that the slaves were his property was based on maritime tradition, which allowed ownership in those who were “bought and sold in India” through the international slave trade.\textsuperscript{155} Lord Chief Justice Sir Creswell Levinz agreed that “negroes being usually bought and sold among merchants, as merchandise and also being infidels there might be a property in them sufficient to maintain trover.”\textsuperscript{156} However, such a limited legal action simply upheld the owner’s right to recover the value of personal property in blacks under the particular circumstances of this case. As Higginbotham says, “philosophical or legal arguments for or against slavery” were not at issue, since Levinz’s narrow judgment merely considered if and when blacks could be held as human chattels under an action in trover.\textsuperscript{157} The final decision in Butts was nisi causa, or no judgment at all. Although Levinz pledged to conclude the case at the end of the term, there is no evidence of a subsequent resolution.\textsuperscript{158}

Sixteen years later, Levinz presided over a similar unresolved case, Chambers v. Warkhouse (1693). On this occasion, after rendering a verdict for the plaintiff, he stated that, since “trover lies of musk-cats and monkies” or “little whelps of any sort, either of

\textsuperscript{154} Butts v. Penny, 2 Lev. 201 (1677), 518; 3 Keb. 785, 1011. Levinz reported an action of trover for two hundred slaves, but only ten were mentioned in the roll. 20 St. Tr. 1 at 51n.

\textsuperscript{155} 3 Keb. 785 (1677), 1011.

\textsuperscript{156} 2 Lev. 201 (1677), 518.

\textsuperscript{157} Higginbotham, In the Matter of Color, 321.

\textsuperscript{158} 2 Lev. 201 (1677), 518.
dogs, bears, &c.,” it should lie in blacks for the same reason. Ultimately, a technicality led to an “arrest of judgment” in the case, yet such a demeaning comparison reflected the views of many seventeenth-century Englishmen. The inability of the court to reach definitive rulings in Butts and Chambers began a century-long legal struggle over African slavery in England. Because of the courts’ references to infidels, masters also initiated a lengthy campaign to prevent slave conversions. Carol Bauer has said that any case involving religion “might be employed as a two-edged weapon” for if “infidelity sanctioned slavery then, conversely, baptism would confer freedom.”

Gelly v. Cleve (1696/7) perpetuated this fear when the court adjudged “that trover will lie for a negro boy; for they are heathens.” Whether or not Christianity could legally unshackle slaves remained in question, along with the broader issue of domestic slavery, until it was generally accepted that one did not negate the other. In 1765 Blackstone argued against the right to deny slaves the Trinity:

Hence too it follows, that the infamous and unchristian practice of withholding baptism from negro servants, lest they should thereby gain their liberty, is totally without foundation, as well as without excuse. The law of England acts upon general and extensive principles: it gives liberty, rightly understood, that is, protection, to a jew, a turk, or a heathen, as well as to those who protects the true religion of Christ.

Yet, to safeguard the legality of a written contractual agreement—for instance, covering a black apprentice bound by a long indenture or servant hired for life—he immediately

159 Chambers v. Workhouse, 3 Lev. 335 (1693), 717-718.


161 Gelly v. Cleve, 1 Ld. Raym. 147 (1696/97), 995.

162 Blackstone, Commentaries I, 413.
qualified the passage, stating that such conversions did not “dissolve a civil contract, either express or implied” because the labor a “heathen negro owed to his English master, the same [was] he bound to render when a christian.”

While the decisions in Butts, Chambers and Gelly upheld trover in blacks, the trespass case of Chamberline v. Harvey (1696/7) illustrated the courts’ fluctuating opinion regarding slavery. Like Somerset’s case eight decades later, the verdict hinged on the status of a slave once on English soil. Following the death of a Bajan plantation-holder named Edward Chamberlaine, his widow Mary inherited his slave whom she later transported to England after remarrying John Witham. Mary subsequently died and Witham loaned out the slave who “served other subjects” before he was lastly “retained in the actual service of Robert Harvey.” This prompted William Chamberline to issue an action of trespass against Harvey, claiming inheritance in his deceased mother’s slave. First, the court ruled that, although Bajan colonial law stated that slaves “shall descend unto the heir or widow of any person dying,” the lex loci [colonial law] was separate from the laws of the metropole which prohibited bondage: “so that the bringing him (the slave) to England discharges him of all servitude.” Second, the verdict denied the plaintiff’s claim that slavery in Barbados was equivalent to ancient villeinage. To hold the defendant as a villein “the plaintiff and his ancestors must be seised of this negro and

163 Ibid., 413. “But by what law is the Negro ‘Bound to Render’ such service,” retorted Sharp, for “this has never been declared, neither can such a law be produced, except in the case of a written contract.” Sharp, A Representation, 137.

164 Chamberline v. Harvey, 3 Ld. Raym. 129 (1696/7), 603-605; 1 Car. 397, 830; 1 Ld. Raym. 146, 994; 5 Mod. 182, 596-601.

165 3 Ld. Raym. 129 (1696/7), 604, 605.
his ancestors time out of the memory of the man” which was impossible because Barbados “was acquired within time of memory.” Such legal efforts either associating or isolating colonial from English law or villeinage from slavery foreshadowed fundamental courtroom strategies for both sides during the eighteenth century. Last, the court qualified the verdict in Chamberlaine by noting that if Harvey’s defense had sued *per quod servitium amicit* he could have recovered for the loss of service but not for the actual value “or any damages done to the servant.” The suggestion that owners employ an alternative legal action to obtain some degree of relief set a precedent that benefited future slave claims. Such legal hair-splitting was merely a technical tactic, notes William M. Wiecek, since “trover would treat the slave as a chattel, a thing so utterly unfree that it was vendible” and similarly “trespass *per quod servitium amicit* would liken the slave to a bound...laborer...a human being whose freedom was restricted.”

The decision in Chamberlaine was a volte-face since it contradicted Levinz’s judgment twenty years earlier. Subsequently, courts continued to disagree with one another and the issue became increasingly confused. The introduction of questionable precedents because of technicalities and legal incompetence contributed to the judicial pandemonium. Invested with the coif in 1689, Lord Chief Justice Sir John Holt soon presided over his own flawed suit involving slavery. In *Smith v. Brown and Cooper*

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166 Ibid., 600-601, 604.


168 1 Car. 397 (1696/7), 830.
(1706) the plaintiff had purchased a slave in Virginia before exporting him to England. He then sold the slave in Cheapside to Brown and Cooper, and later sued the pair in an *indebitatus assumpsit* for non-payment of £20. Since the sale was alleged to have occurred in London, Holt has been credited for taking advantage of this error in judgment—dismissing the suit on the basis “that as soon as a negro comes into England, he becomes free.” One might “be a villein in England, but not a slave” he continued. Holt later acknowledged, however, that if Smith’s defense had pointed out “in the declaration, that the sale of the negro was in Virginia” and not London, Brown and Cooper would have been “indebted to him” since “negroes by the laws and statutes of Virginia may be sold as chattels.” Nevertheless, the laws of England did not apply to Virginia: “being a conquered country their law is what the King pleases; and we cannot take notice of it but as set forth.” So, the court again recommended a legal option by stating that, if the plaintiff “amend and alter” the grievance to prove that the defendant was owed for a slave purchased in Virginia and not London, he could at least be compensated for the purchase price. Higginbotham observes that Holt’s judgment at once “sustained the purity of the English air” and concurrently “supported the impurity of racial slavery by utilizing the technical nuances of common law pleadings.” The credibility of the ruling sustained further damage when Assisting Justice Powell voiced his strong dissent, stating that in an

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170 *Smith v. Brown and Cooper*, 2 Salk. 666 (1706), 566; 1 Holt 495, 1172-1173.


172 2 Salk. 666 (1706), 566, 567.
inherited villein the owner has property but English "law takes no notice of a negro."\textsuperscript{174}

In other words, said Long, because plantation slaves were not considered subjects of the realm "this class of people were neither meant, nor intended, in any of the general laws...made for the benefit of its genuine and natural born subjects."\textsuperscript{175}

In a similar case, \textit{Smith v. Gould} (1706), Holt presided over another action of trover for the return of "among several things" a singing slave.\textsuperscript{176} Since blacks were legal chattels "by the law of the plantations," the plaintiff argued that trover lay for him in England. He further based his argument on the Old Testament\textsuperscript{177} and cited \textit{Butts}, yet the court rejected the plea and maintained that property could not be held in slaves for "the common law takes no notice of negroes being different from other men."\textsuperscript{178} While the motion denied trover in blacks, it was reported that "the court seemed to think that, in trespass \textit{quare captivum suum cepit}\textsuperscript{179} for loss of service, "the plaintiff might give into evidence that the party was his negro, and he bought him."\textsuperscript{180} Sixty years later,

\begin{footnotesize}
\begin{enumerate}
\item Higginbotham, \textit{In the Matter of Color}, 326.
\item 1 Holt 495 (1706), 1173.
\item Long, \textit{Candid Reflections}, 13.
\item \textit{Smith v. Gould}, 2 Salk. 666 (1706), 567, 1275; 2 Ld. Raym. 1274, 325n, 326, 328. Because the tenor of this case is similar to \textit{Smith v. Brown and Cooper} and directly follows it in the \textit{English Reports} they might be one in the same.
\item Exodus 21:2-11 discusses property in Hebrew servants.
\item 2 Ld. Raym. 1275 (1706), 338.
\item [Latin "because he took his captive"] i.e. his own, belonged to him.
\item 2 Salk. 667 (1706), 567.
\end{enumerate}
\end{footnotesize}
Blackstone was to base his account of this aspect of the law on *Smith v. Brown and Cooper* and *Smith v. Gould*. In doing so, he reinforced Holt’s dictum:

> Very different from the modern constitutions of other states, on the continent of Europe, and from the genius of the imperial law; which in general are calculated to vest an arbitrary and despotic power of controlling the actions of the subject in the prince, or in a few grandees. And this spirit of liberty is so deeply implanted in our constitution, and rooted even in our very soil, that a slave or a negro, the moment he lands in England, falls under the protection of the laws, and with regard to all natural rights becomes *eo instanti* a freeman.\(^\text{181}\)

Nevertheless, during the intervening period, pro-slavery advocates used the technical inconsistencies in Holt’s verdicts to their advantage, arguing that the ruling was ambiguous and unresolved. Indeed the cases never even dealt directly with “the great question of slavery,” but treated it peripherally, by adjudicating instead the damages for the loss of the service. Moreover, even for the few patrons of freedom who viewed *Smith v. Brown and Cooper* and *Smith v. Gould* as victorious, W.S. Holdsworth notes that the verdicts were “of little avail unless means [were] provided to assert them.”\(^\text{182}\) In other words, since the social climate of early eighteenth-century England was not yet galvanized by a collective anti-slavery movement, these decisions benefiting black

\(^{181}\) Blackstone, *Commentaries I*, 123. This was reiterated in the fourteenth chapter, entitled “Of Master and Servant:” “As to the several sorts of servants: I have formerly observed that pure and proper slavery does not, nay cannot, subsist in England; such I mean, whereby an absolute and unlimited power is given to the master over the life and fortune of the slave. And indeed it is repugnant to reason, and the principles of natural law, that such a state should subsist any where. Upon these principles the law of England abhors, and will not endure the existence of, slavery within this nation...And now it is laid down, that a slave or negro, the instant he lands in England, becomes a freeman; that is, the law will protect him in the enjoyment of his person, his liberty, and his property.” Blackstone, *Commentaries I*, 411, 412.

liberties received little public attention—leaving thousands of slaves in a state of *de facto* bondage.\textsuperscript{183}

The legal status of slaves remained uncontested but confused for several years after Holt’s judgments. Therefore, according to Clarkson, some blacks increasingly absconded and “prevailed upon some pious clergyman” to baptize them or located a godfather. The owners “of course made search after them, and often had them seized,” while other slaves, if able, resolutely called on these “pious” men, who “dared those, who had taken possession of them, to send them out of the kingdom.”\textsuperscript{184} Such insolent boldness on the part of determined slaves unsettled owners and led to an *obiter dictum* on 14 January 1729 which explicitly repudiated *Smith* and gained national attention. The following joint-opinion was uttered by two of England’s most respected legal minds, Attorney General Philip Yorke and Solicitor General Charles Talbot:

\begin{quote}
We are of opinion, that a Slave by coming from the West-Indies to Great Britain, or Ireland, either with or without his master, doth not become free; and that his master’s property or right in him, is not thereby determined or varied; and that baptism doth not bestow freedom in him, nor make any alteration in his temporal condition in these kingdoms: we are also of opinion, that the master may legally compel him to return again to the plantations.\textsuperscript{185}
\end{quote}

Yorke and Talbot delivered this opinion at the request of many anxious slave merchants, but neither man held a judgeship at the time; thus, it had no legal force, being merely an extra-judicial opinion voiced “after dinner” at Lincoln’s Inn Hall.\textsuperscript{186} Nevertheless the

\textsuperscript{183} Walvin, *Black and White*, 111.

\textsuperscript{184} Clarkson, *The History of the Abolition of the Slave-Trade*, vol 1, 64.

British merchants, planters and others “gave it of course all the publicity in their power” since they sensed a growing tide of sympathy for the *de facto* slaves in England.\(^{187}\) Says O. A. Sherrard, it was one thing for owners in the West Indies to abuse slaves publicly, “but the sight of a negro buffeted and beaten and dragged violently away was a new and disturbing sight for the Englishman, and one, moreover” of which he increasingly disapproved.\(^{188}\) Still, the merchants’ lobby immediately published the opinion in *Wilford’s Monthly Chronicle*, and it was highlighted again twelve years later in an extensive article entitled “Case of the Planters and Negroes,” which Clarkson was to describe as “cruel and illegal.”\(^{189}\) Consequently, the successful promotion of Yorke-Talbot by the West India interest overshadowed the perceived “anti-slavery” decisions by Holt—reviving owners’ rights just as they were becoming fearful of reclaiming escaped blacks. Before long, uttered Clarkson, newspapers in London again listed rewards for the return of fugitive slaves in a like manner “as we find them advertised in the land of slavery.”\(^{190}\)

The ostensible legal importance of the opinion settled the issue of domestic slavery until the case of *Pearne v. Lisle* (1749) was heard before the court of equity by

\(^{185}\) 20 How. St. Tr. 1 at 70.

\(^{186}\) Clarkson, *The History of the Abolition of the Slave-Trade*, vol 1, 65.


\(^{188}\) *Wilford’s Monthly Chronicle* (1730), 218; *Gentleman’s Magazine XI* (1741), 145-147, 186-188; Clarkson, *The History of the Abolition of the Slave-Trade*, vol 1, 65.

Lord Chancellor Hardwicke. On 18 April 1748 an agent for Pearne leased (at £100 Antigua money per annum) fourteen slaves to the defendant Lisle who had “refused to pay” Pearne “for two years service.” Hardwicke relied on Butts and ruled that “a man may hire the servant of another, whether he be a slave or not, and will be bound to satisfy the master for the use of him. I have no doubt but trover will lie for a negro slave; it is as much property as any other thing.” He noted that the decision in Smith v. Brown and Cooper “has no weight with it” for Holt had used the term “trover” for uno Aethiope vocat negro instead of for a slave and “negro did not necessarily imply slave.” Also, according to Hardwicke, Holt had drawn an improper distinction between the laws of the colonies and the laws of England. If, in fact, slaves were free once in England why should they “not be equally so when they set foot in Jamaica, or any other English plantation” for those territories are “subject to the laws of England.” He also relied on the spurious Lincoln’s Inn Hall opinion to resolve the issue of black baptism:

there was once a doubt, whether, if they were christened, they would not become free by that act, and there were precautions taken in the Colonies to prevent their being baptized, till the opinion of Lord Talbot and myself, then Attorney and Solicitor-General, was taken on that point. We were both of opinion, that it did not at all alter their state.

Hardwicke’s comprehensive pro-slavery judgment included a discussion of villeinage. Since “at this time” no law had abolished the system, the lord chancellor considered slavery an extension of villeinage. As trover could be brought for a villein, it applied for “the new species of slavery.” Because its publication in the English Reports was delayed the final judgment in Pearne ultimately had no legal value until 1790.

191 Pearne v. Lisle, 1 Amb. 75 (1749), 47-49.
192 1 Amb. 75 (1749), 48.
Slaveowners were therefore unable to use the verdict for support. Moreover, due to stenographer Charles Ambler's dubious reputation, the actual wording of Hardwicke's judgment was questionable. However the verdict initially caused a reversal for black freedom by providing more official fodder for the West Indian lobby than the Yorke-Talbot position.

The increased importation of slaves during the eighteenth century was a testament to the influence of Yorke-Talbot and *Pearne*. The celebrity of these two law officers of the crown and the widespread promotion of their opinions provided slaveowners with a favorable "constitutional amendment." The unofficial ruling in 1729 was viewed as legal gospel. The official ruling in 1749 by Hardwicke also deterred further litigation because of his extended tenure and profound influence as Lord Chancellor. Sherrard explains that legal contemporaries "had no desire to challenge" the judicial reasoning of such a venerable legal mind since "a ruling given by him was not lightly to be set aside." But, after Hardwicke retired from public life in 1762, his successor Lord Henley challenged his ruling when adjudicating *Shanley v. Harvey* (1762). Edward Shanley had imported the slave Joseph Harvey when he was a nine-year old as a gift for his niece Margaret Hamilton. Harvey soon Anglicized his name once in England and before Hamilton's death she bequeathed "£700 or £800" to him, stating "God bless you, make a good use

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193 Ibid., 48.
196 *Shanley v. Harvey*, 2 Eden 125 (1762), 844-845.
of it.”197 This incited Shanley, the estate administrator for Hamilton, to sue for the return of Harvey, but Henley ruled that “as soon as a man sets foot on English ground he is free: a negro may maintain an action against his master for ill usage, and may have a habeas corpus198 if restrained of his liberty.”199 The fact that Hardwicke was six years removed from the lord chancellorship and retired from public life eased political pressures that might have otherwise affected Henley’s judgment. Nevertheless, despite appearances, a strong dissent from the Attorney-General crippled the decision, prompting Clarkson to lament that blacks were still “hunted in [the] streets as a beast of prey,” transferred to the American or West Indian colonies and, sold at al fresco auctions in England.200 However, the publicity accorded to such decisions in the press was a boon for opponents of slavery and provoked many slaves to flee.

IV

Henley’s decision was the last reported case involving slavery in English courts until the illegal detention of a young black servant in 1765 raised a new-found resentment against slavery and vaulted the Quaker Granville Sharp into the abolitionist arena. The grandson of the Archbishop of York, Sharp had joined the Ordnance Department as a junior clerk in 1758, but seven years later a moral epiphany “directed his attention towards the sufferings of a race of men who had long been the sport and victims of

197 2 Eden 125 (1762), 844.

198 Habeas Corpus [Law Latin “that you have the body”] “A writ employed to bring a person before a court, most frequently to ensure that the party’s imprisonment or detention is not illegal.” Garner, Black’s Law Dictionary, 715.

199 2 Eden 125 (1762), 844-845.
European avarice." While rightly lionized as a seminal leader of English abolitionism, his sense of *noblesse oblige* demonstrated that Sharp was still a man of his time who shared contemporary racist views. "I am far from having any particular esteem for the negroes," he noted in a letter to Jacob Bryant, "but as I think myself obliged to consider them as men, I am certainly obliged, also, to use my best endeavors to prevent their being treated as beasts." Sharp later stated that individual blacks occasionally displayed "symptoms of ingenious" but collectively their condition "is not favorable to genius of any kind." Nevertheless, in 1765, while visiting his brother, Dr. William Sharp, at his medical offices at Mincing Lane, London, Granville encountered the slave Jonathan Strong. He had received beatings from his owner, David Lisle, a Bajan lawyer, who had abandoned Strong and left him for dead after customary pistol-whippings "occasioned his head to swell" which greatly impaired his vision.

William Sharp immediately admitted Strong to St. Bartholomew's Hospital where he was cured of his general complaints, but the return of his sight remained very doubtful. This affliction rendering him still incapable of providing for himself, both Mr.

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200 Clarkson, *The History of the Abolition of the Slave-Trade*, vol 1, 78.


William and Mr. Granville Sharp gave him charitable assistance at different times, not having the least suspicion that any person whatever had any claim on his person. 205

After a four-month convalescence, with the help of William and Granville Sharp, Strong obtained employment under an apothecary named Brown, in Mincing Lane, Fenchurch Street. But Lisle fortuitously identified his slave two years later, and hired John Ross, keeper of the Poultry-Compter, and William Miller from the Lord Mayor's office, to seize him. Granville Sharp explained the incident in his memoirs:

He (David Lisle) employed two of the Lord Mayor's officers to attend him to a public-house, from whence he sent a public messenger, to acquaint Jonathan Strong that a person wanted to speak with him: Jonathan, of course, came and was shocked to find that it was his old master who had sent for him, and who now immediately delivered him into the custody of the two officers. Jonathan, however, sent for Mr. Brown, who likewise came, but being violently threatened by the lawyer, on a charge of having detained his property (as he called Strong), he was intimidated, and left him in Lisle's hands. 206

Strong immediately sent for his godfathers, John London and Stephen Nail, to obtain relief but the keeper of the prison denied them access. The prisoner then recollected the past assistance of Sharp and sent him a letter seeking further aid. Sharp soon arrived at the Poultry-Compter and claimed that Strong had been incarcerated without a warrant. In the meantime, Lisle detected a profit-potential in his now healthy slave and sold him for £30 to a Jamaican planter and lawyer named James Kerr:

To all to whom these presents shall come, David Lisle, of the parish of St. James, &c. &c. greeting. Know ye that the said David Lisle, for and in consideration of the sum of thirty pounds good and lawful money, &c. to him in hand truly paid by James Kerr, Esq. Late of Jamaica, &c. &c., doth grant, bargain, sell, and confirm unto the said James Kerr, his heirs and assigns, one Negro Man Slave, named Jonathan Strong, now in the possession of the said David Lisle, and the reversion and reversions, remainder and remainders rents, profits, and services of the said Slave, and all the estate, right, title, interest, property, claim, and demand whatsoever, of him the said David Lisle, of, in, and to the same, To have and to hold the said Negro man, Jonathan Strong, unto the said James Kerr, his heirs, &c. to the only proper and

205 Minutes of the Case of J. Strong; quoted in Ibid., 32fn.
206 Hoare, Memoirs, 33.
Before paying Lisle, however, Kerr demanded that the slave be placed aboard the slaving vessel *Thames*, which was bound for the West Indies. The bill of sale was presented at the *Strong* trial held in the Mansion House on 18 September 1767, and after considering the evidence, the Lord Mayor, Sir Robert Kite, released Strong because “the lad had not stolen any thing, and was not guilty of any offense and was therefore at liberty to go away.” Sharp attended the hearing, and following the verdict, David Lair, the captain of the *Thames*, attempted to seize Strong by the arm claiming that he was taking “him as the property of Mr. Kerr.” Sharp immediately charged him “for an assault,” which prompted Kerr and Lair to retaliate by issuing a writ of trespass against him—seeking £200 for being dispossessed of Strong.208

When Sharp retained the recorder of London, Sir James Eyre, the solicitor “brought him a copy of the opinion given in the year 1729,” noting, as many had been led to believe, that it was an authoritative statement opposing instant freedom for slaves coming to the British Isles. Undaunted and resolute, he wrote a letter to Lord Hardwicke, declaring that

by my professional defenders, I was compelled, through the want of regular legal assistance, to make a hopeless attempt at self-defense, though I was totally unacquainted, either with the practice of the law, or the foundations of it, having never opened a law-book (except the Bible) in my life, until that time, when I most reluctantly undertook to search the indexes of a law library, which my bookseller had lately purchased.209

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207 The bill of sale quoted in Ibid., 35f.

208 Hoare, *Memoirs*, 35. Granville Sharp’s brother James also attended the hearing, and it was he, not William Sharp, who was sued along with his brother.

209 Ibid., 36, 37.
Despite his initial ignorance of the law, over the next two years Granville Sharp produced the tract, *A Representation of the Injustice...of Tolerating Slavery*, which systematically destroyed all legal and moral arguments supporting the peculiar institution. His work argued that blacks could not be held in perpetual or absolute service and, like all “other aliens...when resiant” in England, they were subjects of the King, entitled to equal protection under the laws of England, “in particular” the 1627 *habeas corpus* act.\(^{210}\) Sharp explicitly refuted the Yorke-Talbot opinion and cited numerous ethical and legal authorities such as the Bible, Charles-Louis de Montesquieu, and decisions by Justices Holt and Henley. He rooted his treatise in the principles of natural law: a moral “philosophical jurisprudence” based on rational human conduct independent of statutory or judicial procedures.\(^{211}\) Sharp explained that to endure slavery is essentially “a toleration of inhumanity” and to avoid such “crime[s] of tyranny” the preservation of civil liberties is paramount. He concluded with an attack on villeinage, arguing that it could not justify modern slavery since the common-law courts had repeatedly discouraged “this detestable practice” to the point that “a single villein...has not been known for many ages.”\(^{212}\)

Sharp delivered the study to Blackstone who circulated “twenty or more” copies to legal colleagues at the Inns of Court. By this time the celebrated legal commentator was fully aware of the long-standing quandary over slavery and Sharp “received little


\(^{212}\) Sharp, *A Representation*, 79, 80, 119-120.
satisfaction from his opinion” when Blackstone claimed that it would be ‘up-hill work in the Court of King’s Bench.’ In the first edition of his Commentaries, Blackstone had accepted the maxim that any slave who lands on English soil “becomes eo instanti [at that very instant] a freeman.” In the second and third editions, however, he added a qualifier reading “though the master’s right to his service may probably [possibly] still continue.” Shyllon claims that Lord Mansfield who “would head any list of Blackstone’s learned friends” had been responsible for the aforementioned changes because “he was well aware of his mentor’s views on the status of black slaves in Britain.” It will be shown that Mansfield’s views on slavery and race differed from this assessment, and Blackstone was no legal lackey, since the Duke of Newcastle had denied the young jurist a law professorship at Oxford because he refused to play the role of political puppet under the Newcastle-Pelham regime. Indeed, Blackstone’s qualifier merely protected the legal rights of masters who held a written contract binding a black hired for a long continuance as a servant, but not as a slave. Nevertheless, at the Lord Mayor’s court, Sharp eventually won his defense against Kerr’s lawyers who “were [so] intimidated” by his erudition of the law that they refused to litigate, and, consequently, the plaintiff “was compelled to pay treble costs for not bringing forward the action.”

213 Hoare., Memoirs, 39, 40.

214 William Blackstone, Commentaries I, 123; Blackstone, Commentaries III, 127; quoted in Shyllon, 59. In the forth edition “probably” was replaced with “possibly.”

215 Shyllon, Black Slaves, 62.


217 Hoare, Memoirs, 40.
However, because the suit had been dropped before its conclusion, this unresolved case represented another dubious victory for the anti-slavery cause.

With the Strong case still pending, Sharp aided Thomas John Hylas, a slave whose wife Mary had been kidnapped by her former master, John Newton, and sent back to her birthplace in Barbados to be resold into slavery. After arriving in England in 1754 as servants of Newton and Miss Judith Alleyne, the slave-holder of Thomas, the Hylas' had married four years later with their owners' consent. Since Alleyne manumitted Thomas after his marriage, he was legally empowered to claim Mary. After living in freedom as a wedded couple for eight years, however, Newton abducted Mary in 1766 and promptly shipped her to the West Indies. Hylas jettisoned any hope of reclaiming his wife for two years. Yet he contacted Sharp after hearing of the Strong trial and “was enabled to prosecute the aggressor,” Newton, before Lord Chief Justice Wilmot, in the Court of Common Pleas, on 3 December 1768. In the trial of Hylas v. Newton the former sued for damages and the return of his wife. Sharp attended the entire hearing and witnessed a verdict delivered “in favour of the plaintiff” for pecuniary damages of one shilling “and the defendant was bound, under a penalty, to bring back the woman, either by the first ship, or at farthest within six months.”218 When the court inimically asked if “he would have his Wife or Damages?” Thomas declined the paltry one-shilling award, which was never his concern, and simply “desired to have his wife.”219 Notwithstanding the judgment in favor of Hylas, blacks remained uncertain of their legal status. The

218 Ibid., 47.

narrow decision by Wilmot simply confirmed the freedom which both Thomas and his wife already enjoyed and did not resolve the broader dispute of slavery in England.

The trial involving Thomas Lewis in *Rex v. Robert Stapylton, John Moloney, & Aaron Armstrong* in 1771 was the last before *Somerset* and the first reported slave case heard by the judge and Whig politician, Lord Mansfield.\(^{220}\) According to Mansfield’s trial notes Lewis was born on the Gold Coast of Africa which he left “to go to sea with the Captain of a Danish Ship.” The defendant Robert Stapylton later “came from Pensacola” and seized Lewis who was then living in New York.\(^{221}\) Lewis was soon conveyed to Chelsea, England, where they resided together. He eventually escaped from his owner until 2 July 1770 when Stapylton and two Watermen named John Malony and Aaron Armstrong

In a dark night seized the person of Lewis, and, after a struggle, dragged him onto his back into the water, and thence into a boat lying in the Thames, where, having first tied his legs, they endeavoured to gag him, by thrusting a stick into his mouth; and then rowing down to a ship bound for Jamaica, whose commander was previously engaged in the wicked conspiracy, they put him on board, to be sold for a slave on his arrival in the island.\(^{222}\)


\(^{221}\) Trial notes of Lord Mansfield, 20 February, 1771, Middlesex, 472 nb., 212; quoted in, Oldham, *The Mansfield Manuscripts*, vol 2, 1242-1243.

The incident occurred near the garden of the mother of explorer and naturalist Sir Joseph Banks and, when her servants "ran out to give assistance" to Lewis, "the ruffians pretended a have a warrant from the lord mayor for his apprehension." Sharp wrote in his diaries the following morning that Mrs. Banks "called on me in the Old Jewry" and the two went to Justice Welch and secured a warrant which "the captain refused to obey." Their will was nevertheless unbroken and "at the request and at the expense of Mrs. Banks" on 4 July a writ of habeas corpus was issued on Lewis' behalf. Two days later the "ship having fortunately been detained in the Downs by contrary winds, the writ was served" and the ship's captain turned his captive over to the authorities.223 The Grand Jury hearing in Middlesex indicted Stapylton, Malony, and Armstrong. The cause of Rex v. Stapylton went to the Court of King's Bench on 20 February 1771 where the defendant Stapylton claimed property in the person of Lewis. John Dunning redirected for Lewis and insisted "upon a position, which I will maintain in any place and in any court of the kingdom, that our laws admit of no such property."224 During the trial Mansfield prayed that the broader question of slavery "would never be finally discussed" and ultimately "avoided bringing the question to issue" which incited anger in Sharp.225 He instructed the jury as follows:

If you are of opinion he was his [the Defendant's] slave and property, you will find a special verdict, and that will leave it for a more solemn discussion concerning the right of such property in England; but if you find he is not the slave, nor property of the defendant, you will find the defendant guilty of this indictment.226

223 Ibid., 52, 53.

224 Clarkson, A History of the Abolition of the Slave-Trade, vol 1, 74.

225 Hoare, Memoirs, 55, 60.
In delivering a verdict, the foreman stated “we don’t find he was the defendant’s property” and a collective shout of “no property no property” from his fellow jurymen followed the pronouncement. Four months later Dunning pressed for a judgment but Mansfield expressed “great doubts on the evidence” and discharged “the Negro on some other pretence.”

V

The extent to which judges disagreed throughout the eighteenth century underscored the legal complexities of domestic slavery. Because the 1760s witnessed neither a decisive common- nor positive-law precedent, the status of slaves remained “a question of fluctuating opinion.” The “pro-slavery” verdicts in Butts, Chambers, Gelly and Pearne merely considered whether trover was an appropriate legal action for recovering damages for slaves purchased outside of England. Likewise the “anti-slavery” verdicts in Chamberline, Smith v. Brown and Cooper and Smith v. Gould did not directly consider the legality of slavery in England, but narrowly adjudicated against loss-of-service damages for slaves obtained in the colonies. There was added confusion for both the opposition and the advocates because of the unresolved nature of these cases and the courts’ suggestion that an owner’s defense might benefit by modifying the wording of his initial pleading after the action had commenced. In 1729 the circumscribed legal value of the Yorke and Talbot extra-judicial opinion so benefited from favorable publicity that it was viewed as a bone fide court judgment. Such attention shifted with the death of

226 Ibid., 60.

227 Ibid., 55, 60, 61.
Hardwicke in 1764 and the ascent of Granville Sharp the following year. A judicial disagreement with the majority opinion in *Shanley* proved a setback for freedom and the trials involving Strong, Hylas, and Lewis lost out to legal minutiae. Nevertheless the exposure generated by these cases aroused determined slaves and late eighteenth-century liberals.

228 Ibid., 69.
Chapter III

'The black must be discharged': Somerset's Case

It is often assumed that Somerset’s case effectively abolished slavery in England. Sir Reginald Coupland claims that, from the moment Lord Mansfield returned his judgment, all slaves, “whether or not they chose to remain in their old masters’ service, were recognized as free men.”229 This chapter shows that the issue was more complex. In so doing it briefly discusses Somerset’s history, analyzes the legal arguments, and examines Mansfield’s professional and personal life as it related to the final judgment.

I

Less than one year after the ruling in Rex v. Stapylton, Sharp again confirmed the persistence of slavery by observing that “James Somerset, a Negro from Virginia, called on me this morning to complain of Mr. Charles Stewart. I gave him the best advice I could.”230 Stewart was a Scot who had been working in Massachusetts as a customs official when he purchased Somerset in Boston. After coming to England in 1769, the slave absconded on 1 October 1771, only to be seized by Stewart less than two months later.231 His captors then locked him in irons aboard the ship Ann and Mary “in order to be carried to Jamaica, and there to be sold for a slave.”232 On 9 December, three of Somerset’s friends—Thomas Walklin, Elizabeth Cade, and John Marlow—issued affidavits in the Court of King’s Bench allowing for a writ of habeas corpus against the

229 Coupland, The British Anti-Slavery Movement, 55.
230 Hoare, Memoirs, 70.
231 20 How. St. Tr. at 21-22.
ship's captain John Knowles.\textsuperscript{233} The official who served this document “saw the miserable African chained to the mainmast, bathed in tears, and casting a last mournful look on the land of freedom” from which he would soon depart. Although the captain at first “became outrageous,” he soon recognized the legal implications of contesting the great writ and “gave up his prisoner, whom the officer carried safe, but now crying for joy” to the mainland.\textsuperscript{234} Knowles read the court return at the conclusion of Michaelmas term in 1771:

\begin{quote}
I, John Knowles…do most humbly certify…at the time herein after-mentioned of bringing the said James Sommerset from Africa, and long before, there were, and from thence hitherto there have been, and still are great numbers of negro slaves in Africa; and that during all the time aforesaid there hath been, and still is a trade, carried on by his majesty’s subjects, from Africa to his majesty’s colonies or plantations of Virginia and Jamaica in America…for the necessary supplying of the aforesaid colonies and plantations with negro slaves; and that negro slaves, brought in the course of the said trade from Africa to Virginia and Jamaica…by the laws of Virginia and Jamaica…have been and are saleable and sold as goods and chattels…and are the slaves and property of the purchasers thereof, and have been, and are saleable and sold by the proprietors thereof as goods and chattels. And I do further certify…that James Sommersett…was a negro slave in Africa…and…being such a negro slave, was brought in the course of the said trade as a negro slave from Africa aforesaid to Virginia…to be sold…on the first day of August in the year last aforesaid, the said James Sommersett…was sold in Virginia aforesaid to one Charles Steuart, esq….who departed from America aforesaid, on a voyage for this kingdom…brought the said James Sommerset, his negro slave and property, along with him…from America to this kingdom…to attend and serve him…with an intention to return to America.\textsuperscript{235}
\end{quote}

In other words, because Somerset had been purchased in Africa through the slave trade, which the English Government sanctioned, and resold in colonial Virginia, whose laws permitted such property, Knowles was entitled to continued ownership on British soil. Since American laws categorically authorized domestic slavery, the suit also called into question the primacy of provincial law over that in England. It has been shown that the

\textsuperscript{232} Hoare, \textit{Memoirs}, 70.

\textsuperscript{233} PRO: K.B./16/17; quoted in Shyllon, \textit{Black Slaves}, 77.

\textsuperscript{234} Clarkson, \textit{The History of the Abolition of the Slave-Trade}, vol 1, 75.
legal status of slaves in the mother country was in a confused state prior to Somerset's trial. Despite the maxim uttered more than two centuries earlier during the hearing of Cartwright, an increased number of slaves had polluted rather than purified the English air. While the de facto status of slaves left owners vulnerable, the English courts failed to adjudicate firmly on their de jure status, leaving them susceptible to continued enslavement. Nevertheless the court pondered whether Stewart, who held legal ownership of Somerset in the American colonies, was entitled to sell and force his rebellious chattel out of England or obliged to recognize that he was free once in England. This conundrum was apparent from Capel Lofft's trial notes which discussed “the very important matters which this case involved,” namely the “rights over the person of a negro resident here, and, supposing such rights to exist, secondly, the extent of them” and finally “the means of enforcing them.” Senior counsel for the defendant, Somerset, were Mr. Serjeant William Davy and John Glynn. Three junior counselors, James Mansfield, Mr. Alleyne and Mr. Francis Hargrave, the latter the acclaimed publisher of the State Trials, also served. Representing the plaintiff, Stewart, were William Wallace and John Dunning (later Lord Ashburton), the former counsel to Thomas Lewis who lamentably

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235 20 How. St. Tr. 1 at 7-22.

236 There are six extant reports of the Somerset case: Lofft's Report, Scot's Magazine, Gentleman's Magazine, Granville Sharp's Manuscripts, Serjeant Hill's Manuscripts, and Dampier Ashurst's Manuscripts—the latter two just discovered in Lincoln's Inn Library in 1988. I mainly rely on Lofft's report because it is the official certified transcript copied in the State Trials, the accuracy of which was never challenged by any of the major figures who participated in the case.

237 20 How. St. Tr. 1 at 1.
“took the opposite side of the question” by shifting to the cause of slavery. Granville Sharp in his personal notes and Capel Lofft in his court report erroneously listed Somerset as the plaintiff, which led numerous modern historians to make the same mistake. However, considering the content of Knowles’ return, and because the Rule Book of the Court of King’s Bench listed the case under the heading *England, The King v. James Somerset*, Stewart was determined to be the injured person seeking redress.

II

Davy requested a lengthy continuance after this return, “on account of the importance of the case,” to which the Chief Justice objected. Thus, with the approval of Judges Ashton, Willes, and Ashurst, Mansfield scheduled the next hearing for 7 February which only allowed for two weeks of preparation. While previous slave cases in English courts excited little press, the recent arguments of Sharp, whom Hoare described as the “distinguished...protector of distressed Africans,” gave the trial immediate attention in British newspapers. The following excerpt from the *General Evening Post* typifies statements made by the press when the suit first came to trial on 24 January 1772:

> On Friday came on before Lord Mansfield, in the court of King’s Bench, a cause, wherein a gentleman from Jamaica was plaintiff, and his negro servant defendant. The cause of trial was, to know how far a black servant was the property of the purchaser by the laws of England, as the black refused going back with his master to Jamaica. But as this was thought by the court a very important decision, it was postponed till towards the

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238 Serjeant-at-law. “A barrister of superior grade; one who had achieved the highest degree of the legal profession, having (until 1846) the exclusive privilege of practicing in the Court of Common pleas.” Garner, *Black’s Law Dictionary*, 1372.

239 Clarkson, *The History of the Abolition of the Slave-Trade*, vol 1, 74f.


241 20 How. St. Tr. at 23.

Following the two-week adjournment Davy and Glynn argued against the return on 7 February. Davy spoke for over two and a half hours, relying heavily on Sharp’s arguments that villeinage had been prohibited and that anyone setting foot on British soil “immediately becomes subject to the laws of this country” and so “are entitled to the protection” of substantive and procedural *due process*. The conflicts between the common laws of England and the colonial laws of Virginia dominated the arguments of both Davy and Glynn. The crux of Stewart’s return was that the laws of the Old Dominion permitted property in his slave both in the American colonies and in England. Davy submitted that if Somerset “remains, upon his arrival in England, in the condition he was in abroad, in Virginia” the master’s power should continue. But, colonial legislation was secondary to the municipal laws of England. Therefore it would be impossible to introduce American slavery in part: “either *all* the laws of Virginia are to attach upon him here, or *none.*” He then stressed this distinction in observing that Virginia’s legal codes had “no more influence, power, or authority in this country” than Japanese law.  

Upon the conclusion of Davy’s speech, Glynn followed for about an hour, and heavily reemphasized that slave institutions were not permanent but geographical, determined by local law. Indeed “slavery [was] created by colony government;” however, once in England “the very air he breathed made [the slave] a free man” since colonial law could never supplant the common law of England, which

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243 *The General Evening Post*, From Saturday, January 25, to Tuesday, January 28, 1772.

244 Hoare, *Memoirs*, 76.
prohibited domestic bondage. Following Glynn's comments Mansfield judged that because of the complexity of the arguments, the trial would continue at the beginning of the court's next term.\textsuperscript{245}

When the third hearing began in early May, Sharp was on a public crusade for abolition. He sent Somerset on errands to potential supporters and garnered further backing through a letter-writing campaign that included a bold plea to Lord North:

\begin{quote}
My Lord, Presuming that information, concerning every question of a public nature, must of course be agreeable to your Lordship, considering your present high office, I have ventured (and hope without offence) to lay before you a little tract against tolerating slavery in England; because the subject (being at present before the Judges) is now become a public topic; and admitting of it, or otherwise, is certainly a point of considerable consequence to this kingdom. His Majesty has been pleased, lately, to recommend to Parliament 'the providing new laws for supplying defects or remedying abuses in such instances where it shall be requisite;' and I apprehend, my Lord, that there is no instance whatever which requires more immediate redress than the present miserable and deplorable slavery of Negroes...I say immediate redress, because, \textit{to be in power,} and to neglect (as life is very certain) even a day in endeavoring to put a stop to such monstrous injustice and abandoned wickedness, must necessarily endanger a man's eternal welfare, be he ever so great in \textit{temporal} dignity or office.\textsuperscript{246}
\end{quote}

The letter possibly offended North since he did not respond, but, in the meantime, Sharp was conspicuously absent from the courtroom. However, his truancy was a calculated maneuver since he had publicly reproved Mansfield's final ruling in \textit{Rex v. Stapylton}. Prince Hoare commented that Sharp's absence was an effort to avoid "irritat[ing] a Judge whom he conceived to be prepossessed against his attempt" to dismantle domestic slavery.\textsuperscript{247} Such presumptuous thinking by Sharp, a man of immense intellect, was misguided and he later discovered that Mansfield held to the Latin axiom \textit{Fiat justitia},

\begin{itemize}
\item \textsuperscript{245} Ibid., 77-78; \textit{The General Evening Post} from Thursday, February 6, to Saturday, February 8, 1772.
\item \textsuperscript{246} Letter text quoted in Hoare, \textit{Memoirs}, 78-79.
\item \textsuperscript{247} Hoare, \textit{Memoirs}, 61, 71.
\end{itemize}
ruat coelum. On 9 May, Mr. James Mansfield (no relation of Lord Mansfield), opened for
Somerset by stating that, as a human creature, the defendant could not be a slave in
England “unless by the introduction of some species of property unknown to our
Constitution.” Although Somerset never presented testimony before the court, Mansfield
read an impassioned statement from him, written in the first person:

It is true I was a slave; kept as a slave in Africa. I was first put in chains on board a British
ship, and carried from Africa to America: I there lived under a master, from whose tyranny I
could not escape: if I had attempted it I should have been exposed to the severest
punishment: and never, from the first moment of my life to the present time, have I been in a
country where I had a power to assert the common rights of mankind. I am now in a country
where the laws of liberty are known and regarded; and can you tell me the reason why I am
not to be protected by those laws, but to be carried away again to be sold?248

In her study of Black Londoners, Gerzina suggests that, although Somerset was a useful
physical presence inside and outside the courtroom, his lawyers did not allow him to read
the statement because they “believed they could plead his case better than he could.”249
But, counsel possibly feared that Somerset might botch the reading and generate a
potential negative reaction from the bar or public observers based on racial stereotypes.
After the statement had been read, Somerset’s counsel cited the example of a slave who
had escaped from Germany to France, where the institution was illegal, and obtained
instant emancipation. He also noted instances of galley-slaves who had fled and were
never again put under the yoke of human bondage. After Mansfield’s final remarks, he
again postponed the case until 14 May due to the illness of one of Somerset’s lawyers.250

248 Ibid., 83, 84.
249 Gerzina, Black London, 125.
250 The Middlesex Journal, from Tuesday, May 12, to Thursday, May 14, 1772.
When Francis Hargrave first heard of *Somerset v. Stewart* he contacted Sharp, stating his support for the anti-slavery cause, further offering “to communicate any arguments that occur to me on the subject, with as much pleasure as if I had been retained as one of the counsel in the cause.” At the fourth hearing, he delivered a penetrating discourse on the legal history of slavery, the amorality of the institution itself, and the consequences for both the African quarry and European antagonists. Hargrave began his defense by strongly arguing that, if the defendant’s right to hold Somerset “is here recognized, domestic slavery, with its horrid train of evils, may be lawfully imported into this country” at the free will of any individual. This was a calculated legal maneuver for it undercut a likely defense argument that imported slaves did not threaten English liberties in general, but only concerned the few individuals who transported them into England. Hargrave later opined that the importance of the case did “not merely concern” James Somerset but “the whole community” as well. Indeed, for the master, the pernicious nature of slavery corrupted his morals by allowing him to “alienate the person of the slave” just as he would other property, and to the individual in bondage “it communicates all the afflictions of life, without leaving for him scarce any of its

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252 An entire written composition of the speech was published in book form immediately following the trial. Francis Hargrave, *An Argument in the Case of James Somerset, a Negro, lately determined by the Court of King’s Bench; wherein it is attempted to demonstrate the present unlawfulness of domestic Slavery in England. To which is prefixed, a state of the case.* (London 1772).

253 20 How St. Tr. 1 at 24.

pleasures." As Higginbotham notes, by pointing out that slavery had a detrimental
effect on whites as well as blacks, Hargrave "raised the issue to a new level of
consciousness" for the court to consider. Indeed, the fact that slavery's corruption of
Englishmen was a worse problem than its effect on Africans was probably a profound
revelation for many whites observing the proceedings.

While Hargrave briefly appealed to the court's sense of *jus naturale* in discussing
the unethical nature of slavery, his knowledge of the legal history of bondage in England
allowed him to recount, with a sweeping display of constitutional pedagogy, the
separation of the "old slavery" of villeinage from the "new slavery" present in the
English colonies. While Sharp had claimed that villeinage was illegal according to
common law, Hargrave admitted that English jurisprudence had never abolished the
system. He reiterated Holt's claim that one might be a villein in England but the moment
a negro steps on English soil he is free. This statement "contains the whole of the
proposition, for which I am contending" pronounced Hargrave for it "assent[s] to the old
slavery of the villein" but "disallow[s] the new slavery of the negro." Since English
villeinage had "not yet [been] buried in oblivion" Hargrave forcefully distinguished it
from contemporary slavery. From the derivation of villeinage at the time of the Norman
Conquest to its disappearance during the reign of James I:

The condition of a villein had most of the incidents...of slavery in general. His service was
uncertain and indeterminate, such as the lord thought fit to require; or, as some of our ancient
writers express it, he knew not in the evening what he was to do in the morning, he was

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255 20 How. St. Tr. 1 at 23, 26.


257 20 How. St. Tr. 1 at 55.
bound to do whatever he was commanded. He was liable to beating, imprisonment, and every other chastisement his lord might prescribe, except killing and maiming. He was incapable of acquiring property for his own benefit...He was himself the subject of property; as such salable and transmissible

But Hargrave noted that, unlike Somerset and other New World bondsmen, the villein could only be seized by title or prescription and the burden of proof fell on the lord to demonstrate that the servitude was “ancient and immemorial” and locally passed down by generations “whereof no memory runs to the contrary.” Hargrave reinforced this by defining the conditions under which colonial and other foreign slaves were bonded:

In our American colonies and other countries slavery may be by captivity or contract as well as by birth; no prescription is requisite; nor is it necessary that slavery should be in the blood and family immemorial. Therefore the law of England is not applicable to the slavery of our American colonies, or of other countries. If the law of England would permit the introduction of a slavery commencing out of England, the rules it prescribes for trying the title to a slave would be applicable to such a slavery; but they are not so; and from thence it is evident that the introduction of such a slavery is not permitted by the law of England. The law of England then excludes every slavery not commencing in England, every slavery though commencing there not being ancient and immemorial. Villeinage is the only slavery which can possibly answer to such a description, and that has long expired by the deaths and emancipations of those who were once objects of it.

Counsel thus removed an important plank from the slave-owners’ argument by demonstrating that villeinage was both different from slavery and, as a local, prescriptive, and immemorial system, inapplicable to foreigners. Indeed, as noted, Sharp had pointed to such clear distinctions in his A Representation of the Injustice...of Tolerating Slavery. Therefore it was hardly a novel argument when Stewart’s counsel analogized villeinage.

Hargrave further disarmed his opponents by showing that earlier unfavorable decisions had been incomplete and narrowly based. Most importantly, he pointed out that the pro-slavery judgments in Butts and Gelly concerned slaves purchased abroad and thus

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258 Ibid., 36.

259 Ibid., 41, 48.
did not “shew the lawfulness of having negro slaves in England.” In addition, counsel noted that while three separate statutes had sanctioned colonial slavery, “it would be a strange thing to say, that permitting slavery there, includes a permission of slavery here.”260 This led Hargrave into a detailed discussion of the *lex loci*, in which he powerfully enforced the arguments by Davy and Glynn, concerning the distinctions between colonial and municipal law. Counsel explained that it “is a general rule” that the *lex loci* cannot predominate over England's municipal laws if “great inconveniences” occur from its implementation:

Now I apprehend, that no instance can be mentioned, in which an application of the *lex loci* would be more inconvenient, than in the case of slavery. It must be agreed, that where the *lex loci* cannot have effect without having the thing prohibited in a degree either as great, or nearly as great, as if there was no prohibition, there the greatest inconvenience would ensue from regarding the *lex loci*, and consequently it ought not to prevail...To prevent the revival of domestic slavery effectually, its introduction must be resisted universally, without regard to the place of its commencement; and therefore in the instance of slavery, the *lex loci* must yield to the municipal law.261

Hargrave demonstrated that similar policies concerning the *lex loci* had been adopted by other European countries, including Scotland, the Dutch territory, Brabant, and parts of the Austrian Netherlands and France. He went on to note that legal rules similarly prohibited slavery in England. In particular, “the law of England” prohibited “any man to enslave himself by contract:”

It may be contended that though the law of England will not receive the negro as a slave, yet it may suspend the severe qualities of the slavery whilst the negro is in England and preserve the master's right over him in the relation of a servant, either by presuming a contract for that purpose, or, without the aid of such a refinement, by compulsion of law grounded on the condition of slavery in which the negro was previous to his arrival here.262

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260 Ibid., 53, 59.
261 Ibid., 60.
262 Ibid., 49, 64.
Of course, this statement was related to the principles of Blackstone, who, as noted, had promulgated instant freedom for any slave landing on English soil. Yet, at the same time, Blackstone was careful to avoid negating any legal contract that a black might owe as an indenture or a hired servant for an extended period. Hargrave thus sought to point out that, even if Somerset were discharged, masters could not circumvent Blackstone by placing future servants under a temporary contract for service while in England, and then have their full-blown status as slaves revived once back in the colonies. Such a practice would be tantamount to perpetual bondage since it merely replaced "the open character of a slave" with "the disguised one of an ordinary servant." This was reinforced by control of the situation by the master since, in the return, he still claims "the benefit of the relation between him and the negro in the full extent of the original slavery," clarified Hargrave. Counsel closed his argument by returning to the subject of villeinage. It has been shown that, in order to quell any efforts on the part of the opposition to use this obsolete system to justify slavery, Hargrave illustrated the crucial legal differences between villeinage and New World bondage. Yet, in the event that the court accepted Stewart's defense that African slavery sprang from villeinage, he explicitly highlighted the local requirement for a villein. If, once in England, Somerset remains the slave of Stewart, "he must be content to have the negro subject to those limitations which the laws of villeinage imposed on the lord," namely that such customs "restrained the lord from forcing the villein out of England." So, even a slave's status were legally analogous to

263 Ibid., 64, 65.

264 Ibid., 66.
that of a villein, pledged Hargrave, owners like Stewart would lose the power to remove and sell him out of England.

Hargrave's lengthy discourse was followed by a few remarks from his colleague Alleyne. Anticipating opposing arguments, he stressed that traditional Aristotelian justifications of slavery drew precedents "from barbarous ages and nations" that are unsuitable for "civilized times and countries." Instead, he relied on the fuller understanding of the laws of nature provided by eighteenth-century authors—particularly Montesquieu and Rousseau—who strongly condemned the cruelty of the institution. A current understanding of these laws had imbued humans with a greater sense of divine justice, which was personified in the moral ideals of right and wrong. He then elaborated on contract law and natural law, explaining that:

As a contract: in all contracts there must be power on one side to give, on the other to receive; and a competent consideration. Now what power can there be in any man to dispose of all the rights vested by nature and society in him and his descendants? He cannot consent to part with them, without ceasing to be a man; for they immediately flow from, and are essential to, his condition as such: they cannot be taken from him, for they are not his, as a citizen or a member of society merely; and are not to be resigned to a power inferior to that which gave them... slavery is not a natural, it is a municipal relation; an institution therefore confined to certain places, and necessarily dropt by passage into a country where such municipal regulations do not subsist.

Alleyne therefore effectively indicated that a quid pro quo must exist in any contractual relationship, whereas an agreement to perpetual bondage was unilateral. In such a compact there was no "competent consideration" for the slave but a state of powerlessness. Also, bondage in the American colonies was a municipal relationship, anathema to the laws of nature, and, therefore, the contract was not binding once the

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265 Ibid., 68.

266 Ibid., 68.
master and servant landed on British soil. As Wieck says, this final point proved “compelling, and was to be adopted by Mansfield as the heart of his opinion.”

II

The opposition presented its case at the fourth hearing, with junior counsel William Wallace opening for Stewart. His initial statements addressed the question of whether or not the right to own slaves existed in England. In doing so, Wallace challenged the arguments of Somerset’s counsel on three counts. First, as anticipated, the defense analogized ancient villeinage to defend the legality of New World slavery in England: “villeinage itself has all but the name: for villeins were in this country, and were mere slaves, in Elizabeth.” Second, counsel challenged the validity of “anti-slavery” decisions such as Smith v. Brown and Cooper, arguing that Justice Holt’s decision was “a mere dictum...unsupported by precedent.” Wallace further noted that although SvBC and other like cases—namely Chamberlaine—had ruled against slaveowners, the judges had suggested other legal options to obtain damages for the loss of the slave’s service (such as per quod servitium amisit). Of course, counsel buttressed his defense by citing the “pro-slavery” opinion of Yorke-Talbot and the ensuing judicial decision by Hardwicke in Pearne v. Lisle. Last, in another move expected by Somerset’s attorneys, Wallace asserted that the laws of Virginia were interchangeable with the laws of England. “It is necessary” that absentee owners who “cannot trust the whites, either with the stores or the navigating the vessel” be allowed to bring slaves over to ensure a safe transatlantic journey. Once Wallace had completed his defense, Chief Justice Mansfield observed that

267 Ibid., 68.
it was the Attorney- and Solicitor-Generals' opinion that was a *dictum* and, therefore, should not be “taken with much accuracy.”<sup>269</sup> Such a bold statement was ignored by Shyllon, who argued that Mansfield hesitated reversing an opinion “at the behest and insistence of an obscure layman [Sharp]” when he “owed his meteoric rise at the bar” to Yorke and Talbot.<sup>270</sup>

The fifth day of the trial opened on Thursday 21 May, with Dunning speaking for Stewart, and Davy delivering the redirect for Somerset. By supporting the cause of slavery, Dunning apostatised, since he had previously represented the civil rights of the slave Thomas Lewis in *Rex v. Stapylton*—declaring that slavery was repugnant to English law. This about-face vexed Granville Sharp, who considered it “an abominable and insufferable practice” for any lawyer “to undertake causes diametrically opposite to their own declared opinions of law and common justice.”<sup>271</sup> Dunning’s opening statements reflected guilt for his shameless tergiversation, repeatedly admitting his personal objection to slavery but avowing that he was “bound by duty to maintain those arguments which are most useful” to his client. He began his defense by harping on the economic and social consequences of black freedom. With all the detachment of a stockyard overseer, Dunning charged that “at £50 a head” the emancipation of England’s 14,000 slaves would cost slave proprietors £800,000.<sup>272</sup> In addition, he warned the court that, if

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<sup>268</sup> Wiecek, "*Somerset: Lord Mansfield,*" 105.

<sup>269</sup> 20 How. St. Tr. 1 at 69, 70.

<sup>270</sup> Shyllon, *Black Slaves*, 121.


<sup>272</sup> 20 How. St. Tr. 1 at 71, 72.
slavery in England were abolished, many of the 166,000 slaves on Jamaican plantations plus “a number of wild negroes in the woods” would enter British soil in large denominations:

The means of conveyance, I am told, are manifold; every family almost brings over a great number; and will be the decision on which side it may. Most negroes who have money (and that description I believe will include nearly all) make interest with the common sailors to be carried hither. There are negroes not falling under the proper denomination of any yet mentioned, descendants of the original slaves, the aborigines, if I may call them so; these have gradually acquired a natural attachment to their country and situation; in all insurrections they side with their masters: otherwise the vast disproportion of the negroes to the whites, (not less probably than that of 100 to one) would have been fatal in its consequences. There are very strong and particular grounds of apprehension, if the relation in which they stand to their masters is utterly to be dissolved on that instant of their coming into England.²⁷³

Of course, the logic behind such an argument played on long-standing race-based fears of white-black social interaction, dating back to the proclamation made by Queen Elizabeth in 1596. By stressing black loyalty to West Indian owners, Dunning sought to sanitize this geographically remote slave system, which had transformed Britain from an insulated archipelago into a thriving commercial empire. Indeed, slave societies were economic necessities in the crude colonial peripheries, where the at-large English population had been far removed and protected from its en masse black population. Emancipation in the British Isles would create a sanctuary, implied Dunning, bringing in droves of these insolent blacks, who would freely live on the dole and, of greater consequence, contaminate the genteel English populace.

Dunning next sought to downplay the pernicious and evil nature of slavery, as described by Hargrave, claiming that he “should decline...to defend” a client whose intent was, for example, to murder or cannibalize his slave, or sell his descendants. Yet,

²⁷³ Ibid., 72.
Stewart’s only claim was to enforce Somerset’s legal contract of servitude, an obligation under which white English laborers were not uncommonly held. Dunning then challenged the contention, made by opposing counsel, that Somerset’s bondage had been illegal, indicating that African laws and customs warranted enslaving prisoners-of-war or those who committed crimes against property. His most telling point was that Somerset’s offenses permitted him to be legally sold to English slave merchants, an activity undeniably sanctioned by “the statutes of the British legislature.”

Counsel concluded with a rebuttal to Alleyne’s understanding of contract law, ignoring Blackstone’s maxim regarding *eo instanti* emancipation, yet utilizing his qualifier regarding indentured or other forms of contractual servitude. Indeed, a natural relationship, echoed Dunning, was not the only consideration when determining a forcible contract. For instance, municipal laws dictated marriages, required wartime enlistments, bound apprentices to serve a parish, and empowered English magistrates “to oblige persons under certain circumstances to serve [i.e., beggars or the dissolute].” So, if contracts for service were abated, this could create a legal crisis in England and also a “great...inconvenience” for any visiting foreigner bringing over a servant, who must upon arrival

> take care of his carriage, his horse, and himself in whatever method he might have the luck to invent. He must find his way to London on foot. He tells his servant, Do this; the servant replies, Before I do it, I think fit to inform you, Sir, the first step on this happy land sets all men on a perfect level; you are just as much obliged to obey my commands. Thus, neither superior, or inferior, both go without their dinner.

Dunning’s examples thus sought to reinforce the argument that unappealing “contract” agreements were commonly imposed upon both Europeans, and, says David Brion Davis,

274 Ibid., 72, 73.

275 Ibid., 74, 76.
Englishmen whose actual status if described ‘as...by contract’ most likely meant that “they [too] had accepted perpetual dependency.” Before closing, to avoid any technical pitfalls, counsel firmly emphasized that his client was not suing for an action of trover or trespass, further reminding the court of Wallace’s earlier contention that, if allowed in previous cases, the writ *per quod servitium amisit* “only declare[d] them [slaves] not saleable; but [did not] not take away from their service.”

III

Five months after it had begun, the trial closed with a brief response from Davy. He endorsed Dunning’s reference to the “great importance” of the question before the court “but not for those reasons principally assigned by him.” Davy contradicted Dunning on two counts. First, he responded to the race-based scare tactics counsel had used, principally his warning that Somerset’s release might lead to a massive influx of Jamaican blacks seeking freedom in England. But, Davy suggested that the return of England’s “14,000 or 15,000” slaves to Jamaica was perilous and insensitive to the white populace there: “The increase of such inhabitants, not interested in the prosperity of a country, is very pernicious; in an island, which can, as such, not extend its limits, nor consequently maintain more than a certain number of inhabitants.” This statement was a savvy legal maneuver, since Davy turned the tables and accused slave apologists of placing colonial owners in danger if the court allowed English masters to compel their black “servant” population “back as [plantation] slaves.” In effect he beat Dunning at his own game by appealing to racial fears, the difference being that Davy’s claim was

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276 Davis, *The Problem of Slavery...Revolution*, 494.
disingenuous since its intent was only designed to benefit his client. While “foreign superfluous inhabitants augmenting perpetually” in the West Indies was “ill allowed” it was “still worse” if blacks were “enemies in the heart of a state [England]” he later claimed.\footnote{278}

Second, Davy attacked Dunning’s comparison of contracts for servitude between a slave and his owner with contracts, for example, between a wife and husband. Davy expostulated that while marriages are “governed by...municipal laws” in particular states, the relationship is also of a moral nature and “I know not any law to confirm an immoral contract” and have it administered. “In the case of master and slave,” Davy further elucidated, “being no moral obligation, but founded on principles, and supported by practice, utterly foreign to the laws and customs of this country, the law cannot recognize such relation.” His use of natural law on the last trial day provided a necessary counterbalance to Hargrave’s brilliant, albeit calculated, arguments chiefly rooted in the fundamentals of English jurisprudence. Davy expounded on this strategy and finally introduced the explicit subject of race during the trial. To enslave a black “who is one by complexion” is an ethical abomination that would “make England a disgrace to all the nations under heaven.” The law officer ended his speech by stating that the “air of England...has been gradually purifying since the reign of Elizabeth,” an assertion that Mr. Dunning “seems to have discovered so much, as he finds it changes a slave into a servant; though unhappily he does not think it of efficacy enough to prevent that pestilent

\footnote{277 20 How. St. Tr. 1 at 76.} \footnote{Ibid., 72, 77.}
disease” once in this country. Before Lord Mansfield adjourned until Trinity term on Monday 22 June he pondered the significance and consequences of the trial:

The question is, if the owner had a right to detain the slave, for the sending of him over to be sold in Jamaica...Contract for sale of a slave is good here; the sale is a matter to which the law properly and readily attaches, and will maintain the price according to the agreement. But here the person of the slave himself is immediately the object of inquiry; which makes a very material difference. The now question is, Whether any dominion, authority or coercion can be executed in this country, on a slave according to the American laws? The difficulty of adopting the relation, without adopting it in all its consequences, is indeed extreme; and yet, many of those consequences are absolutely contrary to the municipal law of England.279

He then explained that “the setting 14,000 or 15,000 men at once loose” by a single judgment “is very disagreeable in the effects it threatens.” Mansfield also wondered how proprietors would be compensated for £700,000 sterling? Would former owners abandon their black servants in the streets of London, Liverpool, or Bristol without the means to support themselves? James Oldham observes that these deliberations offer evidence that Mansfield’s “concerns seemed to relate more to domestic implications” than to the slave interest.280 In any event, after making such observations he noted that “we cannot in any of these points direct the law” for the law must rule us—therefore “fiat justitia, ruat coelum” the Chief Justice idealistically exclaimed: “let justice be done whatever the consequence.”281 He ended by complimenting Alleyne and Hargrave on their legal erudition and conspicuously omitted similar praise for the opposing counsel. Mansfield expressed his pleasure at seeing these two “young gentlemen rise at the bar, who are capable of reading so much to advantage.”282

279 Ibid., 78, 79.
281 20 How. St. Tr. 1 at 79-80.
By the end of Lord Mansfield’s career he was regarded as “the founder of the commercial law” of England, the substantive legal corpus that partly involved, of course, the mercantile exchange in humans. When adjudicating insurance cases, which sometimes involved slave cargoes, Mansfield had used so-called “merchant juries,” expert witnesses who were generally sympathetic to the trafficker. Merchant jurors, noted Mansfield, generally understood maritime cases “very well, and knew more of the subject of it than anybody else present; and formed their judgment from their own notions and experience, without much assistance from anything that passed.” Indeed, in the courts, traditionally a merchant was held “to a higher standard of expertise than a non-merchant;” thus Mansfield’s use of such jurymen was rooted in judicial procedure, rather than any empathy for the slave trade. Yet, because his legal niche was carved defending the tangible property rights of the mercantile community, to “come down...strongly against slavery,” says Edmund Heward, “when the prejudices and interests of many of his countrymen were against him” would demonstrate great judicial independence. So, how does one explain Lord Mansfield’s apparent willingness to judge this case fairly? A brief assessment of his personal experiences and professional

282 Hoare, Memoirs, 89.

283 Lewis v. Rucker, 2 Burr. 1167 (1761); quoted in Oldham, The Mansfield Manuscripts, vol 1, 94.

284 Merchant: “One whose business is buying and selling goods for profit; esp., a person or entity that holds itself out as having expertise peculiar to the goods in which it deals and is therefore held by the law to a higher standard of expertise than a nonmerchant is held.” Garner, Black’s Law Dictionary, 1001.

285 Heward, Lord Mansfield, 147.
decisions reveals a man who encountered prejudice himself and defended the civil rights of others. He was born William Murray at Scone, Scotland on 2 March 1705—the fourth male of eleven children—into a poor Jacobite family. He witnessed the religious persecution of his father, David Murray, the fifth Viscount Stormont and siblings James and Margery. Each was incarcerated for supporting the “Old Pretender” whom they followed into French exile after the failed 1715 rebellion. The future Chief Justice left Scotland in 1718 never the return and entered school in Westminster to study under the high-church Tory-turned Jacobite, Francis Atterbury. After matriculating at Christ Church College, Oxford, in 1723 Murray recognized that his Caledonian heritage might foil admission to an Anglican University with piquant episcopal connections where Scottophobia predominated. To avoid such discrimination, he described his birthplace as Bath instead of Perth and “misled the registrar by aiming at an English pronunciation” to cloak his Gaelic accent. Yet, his early exposure to religious bigotry and xenophobic intolerance had left a lasting impression on William, and his sympathetic judicial decisions involving litigants with dissenting faiths or a darker skin color reflected his own experiences as an émigré Jacobite Scotsman.

After joining the legal profession in 1727, Murray ascended to the position of Solicitor-General fifteen years later and won a seat in parliament for Boroughshire in Yorkshire. Within five years, in 1747, he had become a leader in Commons and opposed the policies of the elder William Pitt. After becoming Attorney-General in 1754, he was appointed Chief Justice of the Court of King’s Bench in 1756. By this time Mansfield

was “a sincere friend to the Church of England.” However, in his Lives of the Chief Justices of England, John Lord Campbell also noted that “he was actuated by the enlightened principles of toleration” for he “steadily protected, by the shield of the law, both dissenters and Roman Catholics from the assaults of bigots who wished to oppose them.”287 In the history of English jurisprudence, Mansfield was the first judge who extended the writ of mandamus288 which forced the established church to admit a non-Anglican minister in Rex v. Barker:

The right itself being recent, there can be no direct ancient precedent; but every case of a lecturer, preacher, schoolmaster, curate, or chaplain, is in point. Here is a function with emoluments and no specific legal remedy. The right depends upon election, which interests all the voters. The subject is of a nature to inflame men’s passions. Should the Court deny this remedy, the congregation may be tempted to resort to force. A dispute as to who shall preach Christian charity, may well raise implacable feuds and animosities, in breach of the public peace, to the reproach of government and the scandal of religion. Were we to deny the writ, we should put Presbyterian Dissenters and their religious worship out of the protection of the law.289

The illustrious Presbyterian minister Dr. Philip Faraceaux later recorded Mansfield’s reversal of a London bye-law which, to garner increased revenues and punish dissenters, fined any nonconformist who served as a sheriff unless he accepted the sacraments of the Church of England. On appeal before the House of Lords Mansfield explained:

There is no usage or custom independent of positive law which makes Nonconformity a crime. The eternal principles of natural religion are part of the common law; the essential principles of revealed religion are part of the common law;—so that any person reviling, subverting, or ridiculing them, may be prosecuted at common law. But it cannot be shown from the principles of natural or revealed religion that, independent of positive law, temporal punishments ought to be inflicted for mere opinions with respect to particular modes of worship. Persecution for a sincere, though erroneous, conscience is not to be deduced from

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287 Ibid., 388.

288 Mandamus [Latin “we command”] “A writ issued by a superior court to compel a lower court or a government officer to perform mandatory or purely ministerial duties correctly.” Garner, Black’s Law Dictionary, 973.

reason or the fitness of things...Conscience is not controllable by human laws, nor amenable to human tribunals. Persecution, or attempts to force conscience, will never produce conviction, and are only calculated to make hypocrites or martyrs. 290

In *Rex v. Webb* (1767), out of what Cecil Fifoot describes as “intellectual indifference, if not spiritual conviction,” Mansfield dismissed popular opinion by upholding the civil rights of a man who accepted the Eucharist as a Roman Catholic priest. “In the face of cogent evidence” Mansfield ruled for the defendant because this albeit certain ceremony “might not have been a mass, and that, though the defendant had certainly officiated, he might not have been a priest.” 291 The verdict so disgusted “many zealous Protestants” that “rumors were spread that the Chief Justice was not only a Jacobite but a Papist, and some even asserted that he was a Jesuit in disguise” claimed Campbell. 292

In *Atcheson v. Everitt* (1775), Mansfield protected the rights of a Quaker who had refused to recite the established witness oath. Upon fundamental principles “I think the affirmation of a Quaker ought to be admitted in all cases, as well as the oath of a Jew or Gentoo” or any other individual capable of serving as a witness. He then reprimanded the legislature for considering Quakers “as obstinate offenders” and other Nonconformists as “criminals” particularly during “the more generous and liberal notions of the present age.” In citing the ideals of “charity” and the rights of “conscience” and “liberal notions” and further stating in *Atcheson* that “there is nothing certainly more unreasonable, more inconsistent with the rights of human nature...than persecution,” Mansfield’s association with tolerance and fairness cannot be doubted. By 1780, the Chief Justice’s Jacobite

290 Ibid., 390.


upbringing and his “demerits as a friend of religious liberty” led Lord John Gordon and
members of his Scotch anti-popery party to incinerate Mansfield’s house during protests
of the Roman Catholic Relief Act of 1778. At the time of these so-called Gordon Riots he
was seventy-six years old, so intolerance followed Mansfield throughout his life. While
the dissidents destroyed his personal papers and nearly murdered him, the Chief Justice
deployed any financial reimbursement from the government and continued the trial with a
lack of prejudice. Mansfield told the House of Lords that “I am fully persuaded that none
of your Lordships will think that the acts of violence lately directed against myself can
influence my exposition of the law.”293 As Shyllon says, his refusal to be influenced even
by a murderous mob hardly reflects a “timidity” of character by a man who was not
inclined “to stir things up…always impelled…toward compromise and expediency.”294
Rather Fifoot aptly claims that “popular odium” for the Chief Justice “would endure, if
he were spared the invective of his peers.”295

Mansfield’s legal expertise was, as stated, instrumental in developing and
interpreting the commercial law. Trafficking in humans “was respectable at the time,”
argues Heward, and there is no proof “that [his] views on the subject of the slave trade
were in any way in advance of those of his contemporaries.”296 The only previous,
reported suit in which Mansfield had encountered an issue dealing with race or slavery
was the aforementioned Rex v. Stapylton, which he had dismissed on a technicality.

293 Ibid., 389, 397, 402.
294 Shyllon, Black Slaves, 119.
295 Fifoot, Lord Mansfield, 41.
During this trial, he had hoped that the question of slavery’s legality would not be discussed, and had passed no comment on it himself. Nevertheless, this case had involved a lengthy and well-measured court dialogue on domestic slavery, unlike the spurious Yorke-Talbot opinion of 1729 which had been canvassed by pro-slavery advocates. Nevertheless, Mansfield’s experiences with blacks also lay beyond the courtroom, in his personal life. In 1763, Lord and Lady Mansfield accepted into their country estate at Kenwood an interracial girl named Dido Elizabeth Belle. The biological daughter of the Royal Navy captain Sir John Lindsey, Belle was a great-niece to the Chief Justice. Upon his death in 1793 Mansfield willed her £500 and provided an additional £100 per annum, while Lindsey left his daughter £500 at his death in 1788. For the thirty years that she resided at Kenwood, Mansfield had a very loving relationship with Dido. When the American loyalist Thomas Hutchinson visited Kenwood, he noted in his diary that Mansfield doted “upon her every minute” for “this thing or that.” Therefore, the fate of England’s several thousand slaves rested upon a judicial officer who was not insulated from race but rather intimately sympathetic towards the plight of blacks in England.

V

Despite the length of Somerset’s case a number of British newspapers followed the whole story, treating it as a cause célèbre. When the Chief Justice approached the bench on 22 June and proceeded to repeat the return to the writ of habeas corpus, the Morning Chronicle described the courtroom as standing-room only, including “several

296 Heward, Lord Mansfield, 139.

297 Higginbotham, In the Matter of Color, 348.
Negroes...to hear the event of a cause so interesting to their tribe,” while the *Daily Advertiser* noted that “a great number of blacks” occupied Westminster-Hall to listen in on the judgment. After the return was read Lord Mansfield spoke for the bench and ruled that:

We pay all due attention to the opinion of Sir Phillip Yorke, and lord chancellor Talbot, whereby they pledged themselves to the British planters, for all the legal consequences of slaves coming over to this kingdom or being baptized, recognized by lord Hardwicke, sitting as chancellor on the 19th of October, 1749, [when he found] that trover would lie [for slaves]; that a notion had prevailed, if a negro came over, or became a Christian, he was emancipated, but [it had] no ground in law; that he and lord Talbot, when attorney and solicitor-general, were of opinion that no such claim for freedom was valid; that though the statute of tenures had abolished villeins regardant to a manor, yet he did not conceive but that a man might still become a villein in gross, by confessing himself of such in open court. We are so well agreed, that we think there is no occasion of having It argued (as I intimated an intention at first,) before all the judges, as is usual, for obvious reasons, on a return to a Habeas Corpus. The only question before us is, whether the cause on the return is sufficient? If it is, the negro must be remanded; if it is not, he must be discharged. Accordingly, the return states, that the slave departed and refused to serve; whereupon he was kept, to be sold abroad. So high an act of dominion must be recognized by the law of the country where it is used. The power of the master over his slave has been extremely different in different countries. The state of slavery is of such a nature, that is incapable of being introduced on any reasons, moral or political, but only by positive law, which preserves its force long after the reasons, occasion, and time itself from whence it was created, is erased from memory. It is so odious, that nothing can be suffered to support it, but positive law. Whatever inconveniences, therefore, may follow from the decision, I cannot say this case is allowed or approved by the law of England; and therefore the black must be discharged.

Once the verdict had been read, a number of Somerset’s fellow-Africans “went away greatly pleased,” reported the *Middlesex Journal*, while others “bowed with profound respect to the Judges, and shaking each other by the hand, congratulated themselves upon their recovery of the right of human nature, and their happy lot that permitted them to


299 *The Morning Chronicle* for Tuesday, June 23, 1772; *The Daily Advertiser* for Tuesday, June 23, 1772.

300 20 How. St. Tr. 1 at 81-82.
breath the free air of England,” noted the *London Chronicle.*301 Another newspaper satirized the black reaction to the judgment, sarcastically commenting on their comportment:

Yesterday two blacks, discoursing on the subject of their right to liberty, by the determination of the long depending cause in favor of Somerset, one of their fraternity, one cried out in great extasy, ‘Ah ah, we be no more mungo here, mungo dere, mungo every where, we be made white by the gentleman in the black gown, and we go here, and dere, and every where, dat is if we like it.’302

Obviously the English press and African observers felt that Somerset’s cause had liberated all slaves in England. Following the trial, even Granville Sharp praised Mansfield for “very ingeniously...in the small compacts of two short sentences” demonstrating that Stewart’s claim to Somerset was inimical to English law. He further asserted his conviction that “there is nothing doubtful or inexplicit in this [Mansfield’s] judgment” and therefore “by the solemn determination in the court of King’s Bench...slavery is not consistent with the English constitution, nor admissible in Great Britain.”303 However the *Morning Chronicle* interpreted the decision accurately by asserting that, in Mansfield’s written speech, “as guarded, cautious, and concise, as it could possibly be drawn up,” he had narrowly concluded that an owner could not withhold *habeas corpus* and force his black slave out of England.304 Mansfield did evince

301 The Middlesex Journal from Saturday, June 20, to Tuesday, June 23, 1772; The London Chronicle from Saturday, June 20, to Tuesday, June 23, 1772.

302 The Morning Chronicle for Wednesday, June 24, 1772.

303 Granville Sharp, “An essay on Slavery, Proving from Scripture its Inconsistency with Humanity and Religion,” in Sharp, An Appendix to the Representation, 6-7; Sharp, “Remarks on the Judgment of the Court of King’s Bench, in the Case of Stewart Verses Somerset” in Ibid., 74-75.

304 The Morning Chronicle for Tuesday, June 23, 1772.
a provincial concern for the economic implications of suddenly emancipating several thousand slaves living in England. This unease was not precipitated by fear of the negative cultural burdens it might have on white Englishmen. Instead, he feared for the slaves themselves, many of whom would be ill-prepared for a sudden, although welcome, liberation. Despite the apparent implication such sentiments suggest to modern observers, Mansfield’s concern was pragmatic and genuine. Obviously the de jure emancipation of several thousand domestic slaves was preferable to continued bondage, but their sudden release could have had dire results for all concerned. Benjamin Franklin commented on the hypocrisy of the court’s judgment in the London Chronicle. In his editorial titled “Pharisaical Britain,” the colonial printer chided the insignificance of the decision. A country which continued to sweeten its tea with slave-produced sugar had “prid[ed] thyself in setting free a single Slave that happens to land on thy coasts!”

VI

While Sharp and the press and other black and white Englishmen exaggerated the significance of Mansfield’s ruling, Franklin underestimated the ramifications, since it accomplished far more than merely liberating James Somerset from slavery. First, when the Chief Justice said that Yorke-Talbot had “no ground in law,” he finally destroyed a metastatic malignancy on the cause of freedom. Second, by stating that slavery was “so odious, that nothing can be suffered to support it, but positive law,” Mansfield confirmed Hargrave’s contention that parliamentary legislation sanctioning colonial slavery was local and accordingly the lex loci could not countermand the municipal laws of England.

Third, by holding that “the cause on the return” was sufficient, Mansfield did not determine a legal definition of slavery in England, but nevertheless confirmed slaves’ rights to habeas corpus which prevented them from being sold abroad. This deemed a contractual agreement unenforceable and, while their de jure status theoretically remained intact, in practice this point of law proved the death-knell for slavery in England. In no case following Somerset did English courts rule for the right of a master over that of his domestic slave. By establishing entitlement to a refuge for galley slaves, Mansfield ensured their protection under the law and proved that it could not be taken “for granted the universal legality of slave property.”

After 1772, no more than four attempts at forced repatriation of slaves occurred in the metropole, of which two were successful. Such efforts, while tragic, were nevertheless isolated instances, for a letter from several blacks written to Sharp in 1788 indicated that following Somerset they had only experienced personal freedom in England. The correspondence offered “grateful thanks” to Sharp “who has been the great source and support of our hopes. We need not use many words. We are those who were considered as slaves, even in England itself, till your aid and exertions set us free.” In 1808, Clarkson observed that blacks, albeit living in a state of poverty, were emancipated and therefore did not fear deportation because of “the glorious result of the trial.”

the poor African ceased to be hunted in our streets as a beast of prey. Miserable as the roof might be, under which he slept, he slept in security. He walked by the side of the stately ship, and he feared no dungeon in her hold... we are no longer distressed by the perusal of impious


308 Hoare, Memoirs, 333.
rewards for bringing back the poor and the helpless into slavery, or that we are prohibited the disgusting spectacle of seeing man bought by his fellow man…we owe this restoration of the beauty of our constitution—this prevention of the continuance of our national disgrace.\textsuperscript{309}

Similarly, when Hoare published his \textit{Memoirs of Granville Sharp} in 1820, he observed that “we no longer see our public papers polluted by hateful advertisements of the sale of the human species” because of the abolitionists efforts of Sharp and the judgment by Mansfield.\textsuperscript{310} In Liverpool, one dubiously documented sale occurred in 1779, but this proved an exception to the rule because no similar advertisements have ever been found.\textsuperscript{311}

\textsuperscript{309} Clarkson, \textit{The History of the Abolition of the Slave-Trade}, vol 1, 78-79.

\textsuperscript{310} Hoare, \textit{Memoirs}, 93.

\textsuperscript{311} The 1779 advertisement was “copied” and sent to Sharp three years after its publication in 1782. \textit{“Liverpool, Oct. 15, 1779—To be sold by auction, at George Dunbar’s office, on Thursday next, the 21\textsuperscript{st} inst. at one o’clock, a Black Boy, about fourteen years old, and a large Mountain Tiger Cat.”} There was oddly no mention of the publication in which the notice was alleged to have occurred. Quoted in Hoare, 93.
Chapter IV
The Impact of Somerset in the British American World

Word of the judgment in Somerset diffused quickly among the black communities in the metropole. The London Packet reported on 29 June 1772 that “near 200 Blacks, with their ladies, had an entertainment at a public house in Westminster” to commemorate emancipation. Of greater significance, numerous other blacks celebrated by leaving their owners at will, including a Bristol slave named Mr. Dublin, who was the nephew of James Somerset. Dublin fled after receiving a letter from Somerset explaining the impact of the case. His master, John Riddell, then contacted Charles Stewart on 10 July 1772, complaining that Dublin had spread the word to his fellow “servants that he had rec’d a letter from his Uncle Somerset aquatinting him that Lord Mansfield had given them their freedom & he was determined to leave me as soon as I returned from London which he did.” While Riddell asked Stewart to “advise” him “how to act” on the matter, the owner concluded that he “shall not give” himself “any trouble to look after the ungrateful villein.” Indeed, noted Hoare, masters were increasingly reluctant to reclaim slaves during the Somerset proceedings since a “general sense and feeling of the English people had long before decided the cause.” Henry Laurens discerned such sentiments during his visit to England in early June 1772, prompting the absentee South Carolina planter to sell off his slave locked aboard a vessel moored at a London dock: “I have a

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312 The London Packet for June 26 through 29, 1772; reprinted in the Pennsylvania Chronicle for August 8, 1772.

Negro on board of the *Fisher*, a very orderly quiet Lad named Andrew Dross...be so kind as to dispose of him...as you think best for my interest." Upon his return to the colonies, Laurens likely assessed the potential implication of the verdict for his fellow American slaveowners. Nevertheless, in England there was an eleventh hour bid to circumvent the impending effects of the decision when the "concerned" Jamaican planter and MP for Rye, Rose Fuller, put a motion to the House of Commons on 25 May 1772 for "Securing Property in Negroes, and other Slaves in this Kingdom." The summer of 1772 proved untimely, for the bill failed to garner enough backing as a result of the increased popular agitation against slavery and the decision by Mansfield. Indeed, an anonymous "London Gentleman" noted that, if Fuller "and the other West Indian Merchants" attempted to reprieve the petition, he should "endeavour to prepare what few friends" he had "in Parliament for an Opposition to such a destructive Measure." Nonetheless, no subsequent attempt was made, and even the planter Long, while protesting *Somerset*, admitted that "the laws of Great Britain do not authorize a master to reclaim his fugitive slave, confine, or transport him out of the kingdom. In other words;

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that a negro slave, coming from the colonies into Great Britain, becomes, ipso facto, Free." 318

A zealous Whig, Long criticized the imperial dominance of the metropole for some time, and, of course, following the Mansfield judgment, his opposition increased as he sought to further distance West Indian from English law. 319 What the slave-interest feared most of all was a snowball effect, whereby Somerset might have a transatlantic influence on the legal status of colonial slaves or the carrying trade. Given the "reciprocal" relationship between slavery and the press, it is unsurprising that newspapers in Britain and the colonies circulated these objections in print throughout the empire. 320 Prior to the decision, the Duke of Richmond "and other worthy persons" prepared to intervene if Somerset was not released since the question concerned the moral well-being of "the whole British nation." 321 Two days before the judgment, a London newspaper argued that, if Somerset was liberated, then "it is to be wished, that the same humanity may extend among members, if not to the procuring liberty for those that remain in our Colonies, at least to obtaining a law for abolishing the African Commerce in Slaves, and declaring the children of the present Slaves free." 322 An article in the London Chronicle

318 Long, Candid Reflections, 56.
319 Elsa V. Goveia, A Study on the Historiography of the British West Indies to the End of the Nineteenth Century (Mexico 1956), 56.
321 Reprinted in The Providence Gazette; and Country Journal for Saturday, August 1, 1772.
in 1773 attempted to quell such abolitionist rhetoric by claiming that the British slave trade “removed” blacks from the “abject” and “arbitrary” system of slavery in Africa. Indeed, colonial slaves lived under “wholesome laws” and were “regularly fed...at a very great expense...have clothing, warm houses” as well as an abundance of “fruits, roots, pulse, and vegetables.” The author argued that, if “the enthusiastic writers for the freedom of negroes” actually emancipated colonial Africans, then “Britain itself [will] become a poor, wretched, defenseless country” for “it is well known to all the commercial world, that the colonies are much the best branch of trade belonging to this kingdom.” Continued abolitionism in England would lead to “fatal mischief,” for such “enthusiastic notions of liberty...may occasion revolutions in our colonies.”323 Once word of the judgment reached America by way of sailors, many of whom were blacks, and other travelers, colonial slaves quickly seized the initiative and attempted to abscond across the Atlantic.324 An advertisement in the Virginia Gazette in 1773 lamented the escape of two slaves to Britain “where they imagine they will be free (a Notion now too prevalent among the Negroes, greatly to the vexation and Prejudice of their Masters).” Likewise, a notice that appeared in the following year called for the return of a runaway slave from the hinterland of the colony of Georgia who intended “to board a vessel for Great Britain...from the knowledge he has of the late Determination of Somerset’s


323 The London Chronicle from Saturday, March 13, to Tuesday, March 16, 1773, 249-250.

Case." When a slave named George Lux escaped in 1775, he likely did so because of the Mansfield judgment, since his owner noted in the *Pennsylvania Gazette* that Lux was bent on “going...to London.”

While pro-slavery interpretations of *Somerset* inscribed in the press could not counteract popular views spread among the transatlantic black community by word of mouth, the judgment also prompted an abolitionist dialogue between Sharp and Anthony Benezet which gave “fresh zeal” to a collective British-American anti-slavery cause. In addition, the *Somerset* verdict aroused the Methodist John Wesley to publish his *Thoughts on Slavery* which galvanized his American followers. Shepherded by the presbyter Bishop Francis Asbury, the colonial Wesleyites denounced the trade as well as slave labor “in our American plantations” for “*men buyers are exactly on a level with men stealers.*” The decision also incited “ten or twenty thousand” abolitionists in the provinces of Virginia, Massachusetts, New Jersey, Pennsylvania, New York and North Carolina to petition their respective assemblies and parliament to end the importation of slaves into the colonies and eradicate the Atlantic trade. Although the War of Independence interrupted the movement, legal systems throughout the colonies

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328 John Wesley, *Thoughts on Slavery* (London 1774), 78.
immediately adopted the English common-law verdict and extensively applied it in courtrooms. Initially, inaccurate coverage by provincial newspapers warning that *Somerset* would directly compromise the rights of slave holders magnified the perceived significance of the case in British America.\(^{330}\) For example, the *New York Gazette* opined before the verdict that “the attention” generated by the trial would provoke parliament “to regulate the African trade.”\(^{331}\) Following the judgment, the *Pennsylvania Gazette* sympathetically observed that, since “the poor Fellow” Somerset was liberated, the British government would “dispense Freedom to all around it.”\(^{332}\) Similarly, Rhode Island’s *Providence Gazette* lamented that the “cause seems pregnant with consequence” and prognosticated that the ruling would be “extremely detrimental to those gentlemen whose estates consist of slaves: It would be a means of ruining our African trade.”\(^{333}\) Tracts by Sharp additionally claiming that the verdict applied to the colonies were soon advertised for sale in America by well-circulated papers, while a reprint of Hargrave’s argument was printed in Boston. Yet such “aspersions thrown out against” the West Indian planters by abolitionists soon prompted a novel pro-slavery response which attempted to minimize the apparent legal implications of *Somerset* outside Briton.\(^{334}\)


\(^{330}\) Patricia Bradley claims that such misrepresentation was deliberately fed to the colonial patriot press from British sources in order to send a strong message of metropolitan indifference to fiery patriots who felt they should be consulted on issues strongly affecting the infrastructure of America. Bradley, *Slavery, Propaganda*, 66-80.

\(^{331}\) *The New York Gazette* for Monday, July 27, 1772.

\(^{332}\) *The Pennsylvania Gazette* for August 26, 1772.

\(^{333}\) *The Providence Gazette* for Saturday, August 1, 1772.

\(^{334}\) *The Pennsylvania Gazette* for September 8, 1773.
Numerous blacks in colonial Massachusetts collectively sued their owners upon hearing of the *cause célèbre* and successfully obtained freedom and damages. Lemuel Shaw, Chief Justice of the Massachusetts Supreme Court, later claimed that “Somerset, of its own force, may have abolished slavery in Massachusetts.” Paul Finkleman notes that following the colonies’ independence, the bulk of English common law—unless inconsistent with the newly written constitution—was imparted into American jurisprudence, and thus *Somerset v. Stewart* “became part of the newly developing American common law.” In particular, most northern states quickly accepted the English common-law standard and freed their slaves following the Revolution. Once fugitive slaves from the south began to abscond into free jurisdictions in the northern states, abolitionist attorneys cited the precedent of *Somerset*, which often led to their successful emancipation. Moreover, Judith Kelleher Schafer demonstrates that even Supreme Courts in many southern states, like Louisiana, extended *comity* to the anti-slavery


336 *Commonwealth* v. *Aves*, 35 Mass. (18 Pick.) 193 (1836); Salmon P. Chase, *Speech of Salmon P. Chase, in the case of the colored woman, Matilda, who was brought before the Court of Common Pleas of Hamilton County, Ohio, by writ of habeas corpus; March 11, 1837* (Cincinnati 1837); Horace Gray and John Lowell, Jr, *A legal review of the case of Dred Scott, as decided by the Supreme Court of the United States* (Boston 1857); New York. Court of Appeals. *Report of the Lemmon slave case; containing points and arguments of counsel on both sides, and opinions of all the judges* (New York 1860); *In re Kirk* 1 Parker 67 (N.Y. Cir. Ct. 1846); Alvin Stewart, *Legal argument before the Supreme Court of the State of New Jersey, at the May term, 1845, at Trenton, for the deliverance of four thousand persons from bondage* (New York 1845); *The case of William L. Chaplin; being on appeal to all respectors of law and justice, against the cruel and oppressive treatment to which, under color of legal proceedings, he has been subjected, in the District of Columbia and the state of Maryland* (Boston 1851); quoted in Paul Finkleman, *Slavery in the Courtroom* (Washington, D.C. 1985), 6, 31, 52, 57, 76, 77, 153, 154, 186.
laws in the north for cases involving fugitive slaves suing for freedom. The justices generally upheld such rights—despite being contrary to Louisiana’s economic dependence on unfree labor—because they had been “trained in the common law” and were “no doubt aware of the similar philosophy of...Somerset v. Stewart.”

Nevertheless, the fugitive slave laws of 1793 and 1850, which were often ignored by the northern states, further confirmed the importance of Somerset since they were necessitated by Mansfield’s ruling. Thus, during the short colonial period following the judgment, numerous slaves either asserted their rights directly by fleeing to England, or appealed to the provincial legal systems because of Somerset. In essence, the verdict roused anti-slavery sentiment in the antebellum United States and provided many fugitive slaves with an early taste of freedom.

II

In Britain, the impact of Somerset affected domestic slavery and the trade far more directly than in the British slave colonies. There were no advertisements offering

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337 “Courtesy among political entities (as nations, states, or courts of different jurisdictions), involving esp. mutual recognition of legislative, executive, and judicial acts. Garner, Black’s Law Dictionary, 261.

338 Judith Kelleher Schafer, Slavery, the Civil Law, and the Supreme Court of Louisiana (Baton Rouge and London 1994), 263.

339 The Caribbean slave societies remained part of the British empire long after the Somerset judgment. The economies in these West Indian slave empires remained solely dependent on unfree black labor, and there remained legal sanctions imposed on a slave who was considered a “thing” or “property” rather than a “person” or “subject.” But, most significantly, unlike in England, in the West Indies there was what Elsa V. Goveia calls a comprehensive and elaborate legal “superstructure” in the “form of police law” which governed these chattel slaves. The lack of such rigid “police” laws in England helped to benefit those like James Somerset, who, if unwilling to serve, would be recognized “as having personal status” under the protection of common law. Goveia, “The West Indian Slave Laws,” 349-350, 353. Nevertheless, while such a legislative
a reward for the return of the estimated 15,000 to 20,000 slaves who escaped following
the verdict, since owners like John Riddell clearly understood that bondage was no longer
recognized in Britain. While such figures were hyperbolized, Braidwood avows that they
demonstrated that either droves of owners had released their servants, or blacks easily
absconded because of the Mansfield judgment.340 Some who continued to be held in
bondage resorted to the courts where the verdict had an immediate impact. In Cay v.
Chrichton (11 May 1773), the Prerogative Court discharged a slave inherited in 1769
since those enslaved either before or after 1772 “were declared [by the Court of King’s
Bench] to be free in England.” In the next year, John Wilkes, a London Alderman, freed a

“superstructure” prevented Somerset from having a significant impact on the status of
Caribbean slaves, it is known that some sixteen pilot slaves who absconded aboard the
Jamaican schooner Deep Nine in early January 1817—and sailed to the Republic of
Haiti—gained their freedom based on the rationale of Somerset. When the owners of the
vessel, James and Robert M’Kewan, discovered that their slaves had landed in Haiti, they
petitioned the president of the Republic, Alexander Pétion, for the return of ship,
supplies, and slaves. Pétion had served under Toussaint L’Ouverture during the
successful Haitian slave revolt which lasted from 1791 to 1804. When pressed to deliver
the runaways, in a letter to M’Kewen, Pétion wrote: “There is no doubt, sir, but the
departure of a subject of one government to another places him under the jurisdiction of
the one which he has adopted, and once under that protection, he is no longer amenable to
the government he had abandoned. England herself offers an example in the right of
asylum, which she has so generously exercised during the revolutionary disturbance
which agitated the world—that, if the persons claimed by Messrs. James and Robert
M’Kewan had been able to set their feet in the territory of England, there where no
slavery exists, certainly the claim would not have been admitted.” Ultimately, the
Government of Haiti returned the boat, but without the supplies or the slaves. Although
the M’Kewan brothers appealed to the British Navy, Henry Goulburn, the colonial under-
secretary to Lord Bathurst, responded by saying “that it appears to his lordship, from the
papers which admiral Douglas’s letter enclosed, that the laws of Hayti much resemble
those of Great Britain, so far as not to permit persons, who have once landed in that
island, to be considered or treated as slaves.” See Richard B. Sheridan, “From Jamaican
Slavery to Haitian Freedom: The Case of the Black Crew of the Pilot Boat, Deep Nine”

340 Gilbert Francklyn, Observations...to effect the abolition of the Slave Trade (London
1789), xi-xii; quoted in Braidwood, Black Poor, 20.
slave on the legal rationale of *Somerset*, and even advised the man to sue for recovery of lost wages.\(^3^4^1\) Walvin argues that such cases demonstrated that “the specific ruling made by Mansfield was regularly flouted” since slaves continued to be imported into England.\(^3^4^2\) However, in *Cay* the slave had been introduced from abroad before the judgment, and each case, by relying on the precedent of *Somerset*, confirmed the judicial importance of the verdict for those who chose to be held in bondage no longer. In any event, the force of the judgment resonated amongst the returning colonial loyalists and absentee planters. For example, while dining at Kenwood in 1779, Thomas Hutchinson, the expatriate Massachusetts governor general, informed Lord Mansfield that “all the Americans who have brought blacks [to England after *Somerset*]...had relinquished their property in them and rather agreed to give them wages or suffered them to go free.”\(^3^4^3\) Later in the same year, a black servant named Joseph Knight tested the legal fortitude of *Somerset* by suing John Wedderburn for his freedom on grounds that he had been purchased in Jamaica and brought to Scotland.\(^3^4^4\) The ruling in *Knight v. Wedderburn*

\(^3^4^1\) MS transcript, NYHS; *The Scot’s Magazine*, XXXVI (1774), 53; quoted in Davis, *Slavery in the Age of Revolution*, 500-501fn.


\(^3^4^3\) Peter Orlando Hutchinson, *The Diary and Letters of Thomas Hutchinson* (Boston 1886), 276-277; quoted in Cotter, “The Somerset Case, 56.

\(^3^4^4\) *Joseph Knight* (a negro) *v. Wedderburn*, 33 Dict. Of Dec. 14545 (Scottish Case); quoted in Catterall, *Judicial Cases*, vol 1, 18-19. Two decades earlier, in 1757, the Scottish courts adjudicated an unresolved case involving “a Negro, who had been bought in Virginia, and brought to Britain to be taught a trade, and who had been baptized in Britain, having claimed his liberty, against his master Robert Sheddan, who had put him on board a ship, to carry him back to Virginia, the Lords appointed counsel for the Negro, and ordered memorials, and afterwards a hearing in presence, upon the respective claims of liberty and servitude by the master and the negro. But, during the hearing in presence,
(1779) strongly echoed the precedent of *Somerset* by declaring that colonial laws "concerning slaves, do not extend to this kingdom" where the "state of slavery is not recognized" and therefore the defendant "had no right to the Negro's service for any space of time, nor to send him out of the country against his consent." Johnson followed this trial with great interest, for Boswell noted during the hearing that "he dictated to me an argument in favour of the negro who was then claiming his liberty, in an action in the Court of Session in Scotland." Two years later, in 1781, thousands from "Lord Dunmore's Ethiopian Regiment" were discharged and freed in England. However, it was no coincidence that the royal governor of Virginia prefigured the idea immediately following word of *Somerset*, proclaiming that numerous colonial runaway slaves were no longer "attached by no tye to their Master nor to the Country." Like other impoverished blacks who mainly resided in the east end of London, these settlers found few opportunities and quickly realized poverty themselves. Nor did the thought of such poor treatment and limited possibilities escape Mansfield, who, as stated, was the Negro dies; so the point was not determined." See *Sheddan v. a Negro*, 33 Dict of Dec. 14545 (Scottish case); quoted in Ibid., 13.

345 Notwithstanding the decision in *Knight v. Wedderburn* a quasi form of slavery continued to exist in Scotland, specifically, in Fife, to control the labor supply of colliers and salters. Since 1701 positive law had withheld the right of habeas corpus from these coal-miners and salt-pans, who, if caught absconding, would be sent "to the house of Correction, there to be whipt and kept to hard Labour." 1 Anne, c. 21 (1701). In 1708 it was further declared that if the escaped collier was seized within an eight-year period he could be returned. 7 Anne, c. 11 (1708). In 1799 parliament finally repealed the system and the workers were abolished "from their servitude." 39 Geo. III, c. 56 (1799).


sincerely concerned for emancipated slaves thrown into a society where many continued to harbor strong racist views.

Mansfield’s reservations proved prophetic and, in the wake of Somerset, Hoare observed that “having now no masters to support them, (many of them unaccustomed to any useful handicraft or calling), and having besides no parish which they could call their own” blacks soon “fell by degrees into great distress, so that they were alarmingly conspicuous throughout the streets as common beggars.”\textsuperscript{348} Returning loyalists from America augmented the situation and indeed these destitute blacks had no parish from where they could petition \textit{in forma pauperis}. This legal conundrum presented itself more than a decade after the \textit{Somerset} judgment in \textit{The King v. The Inhabitants of Thames Ditton} (1785) which was Mansfield’s first case involving a black in England since 1772.\textsuperscript{349} The justice had presided over two insurance cases of slaves being shipped from Africa to the West Indies, the infamous \textit{Zong} trial (1783) and \textit{Jones v. Schmoll} (1785). While en route from Africa to São Tomé in 1781, the Liverpool slave ship \textit{Zong} had lost its way and, running low on water, the ship’s captain, Luke Collingwood, jettisoned 133 sick slaves into the sea to save his crew. Although rain would have eventually replenished his vessel’s water supply, Collingwood proceeded, since drowned slaves were the financial responsibility of underwriters (Gilbert, et al) while expenses incurred from their deaths by ‘natural causes’ would have fallen on both himself and the owners (William Gregson and George Case).\textsuperscript{350} When comparing the \textit{Zong} trial to \textit{Knight v.}

\textsuperscript{348} Hoare, \textit{Memoirs}, 259-260.

\textsuperscript{349} \textit{King v. Inhabitants of Thames Ditton}, 4 Dougl. K.B. 300 (1785), 891-893.
Wedderburn, Walvin argues that “in England there was no such legal loosening of the slaves’ shackles, and the degree to which English courts continued to concern themselves with the chattel status of the Negro was well illustrated by the Zong case.”\textsuperscript{351} However the Zong case and Jones \textit{v.} Schmoll suit, an insurance claim involving slaves killed in a mutiny, were concerned not with domestic slavery in England but with transatlantic slaves who were still considered “property” by statute law.\textsuperscript{352} Mansfield had been “shocked” when the Zong jury considered “the case of slaves...the same as if horses had been thrown overboard.” Yet his only option was to treat the suit as a mercantile legal matter.\textsuperscript{353} The judgment in Knight, which had mimicked that in Somerset, was hostile to slavery on British soil. Mansfield recognized that the British slave trade was beyond the common-law parameters of both the Zong and Jones cases, and, of course, it would take acts of parliament to dismantle both slavery abroad and the carrying trade.

Nevertheless, the trial of Rex \textit{v.} Ditton concerned a former pauper-slave named Charlotte Howe who had been purchased in America by Captain Howe and brought to England in 1781, where she served him in the parish of Thames Ditton, in Surrey, until his death on 7 June 1783. Soon afterwards Charlotte was baptized and continued to live with Howe’s widow. They later moved to the parish of St. Luke’s in Chelsea, Middlesex, until, after a period of five or six months, Howe was abandoned. The pauper filed for relief and sued for back wages in the Court of Quarter Sessions in Surrey, but two


\textsuperscript{351} Walvin, \textit{England, Slaves}, 42.

\textsuperscript{352} Jones \textit{v.} Schmoll, 1 Term R. 130n. (1785).
justices of the peace from Thames Ditton argued that, since Howe had first legally settled in Middlesex for at least forty days, she was the responsibility of the parish of St. Luke’s.\textsuperscript{354} While the order was overturned, Thames Ditton appealed the decision to the Court of King’s Bench on 27 April 1785. Mansfield based his decision strictly on parliamentary legislation, maintaining that “for the pauper to bring herself under a positive law she must answer the description it requires,” namely that “there must be a hiring, and here there was no hiring at all. She does not therefore come within the description.”\textsuperscript{355} In other words, after the death of Captain Howe, there was no contract for “hired” service between Charlotte and the widow; thus, the pauper was not entitled to wages. Indeed, forms of servitude or apprenticeship blind to color still legally existed in Britain “with regard to the right to wages.” This was again reinforced by Blackstone’s

\textsuperscript{353} Hoare, 241.

\textsuperscript{354} The poor law of 1388 had stipulated that “Poor Persons impotent, shall abide in the same Town, or in the next within the Hundred that is able to maintain them.” 12 Rich. II, c. 7 (1388). However by 1601 a new “act for the relief of the poor” modified the statute by requiring that each individual parish was solely required to care for its own poor. 44 Eliz. I, c. 2 (1601). By the mid-seventeenth century the English civil wars had led to a shift in the population, which led many itinerants to go from one parish to the next, whereby they quickly drained what they could from each coffer, placing a heavy burden on individual parishes. To remedy this in 1662 parliament stipulated “Be it therefore enacted by the Authority aforesaid, That it shall and may be lawful, upon Complaint made by the Churchwardens or Overseers of the Poor of any Parish, to any Justice of the Peace, within forty Days after any such Person or Persons coming so to settle as aforesaid, in any Tenement under the yearly value of ten pounds, for any two Justices of the Peace, whereof one to be of the Quorum, of the Division where any Person or Persons that are likely to be chargeable to the Parish shall come to inhabit, by their Warrant to remove and convey such Person or Persons to such Parish where he or they were last legally settled, either as a Native, householder, Sojourner, Apprentice or Servant, for the Space of forty Days at the least, unless he or they give sufficient Security for the Discharge of the said Parish, to be allowed by the said Justices. 14 Charles II, c. 12 (1662).

\textsuperscript{355} 4 Dougl. K.B. 302 (1785), 892-893.
qualifier which had preserved such a written or verbal contract. Shyllon is incorrect in claiming that *Rex v. Ditton* demonstrated that “settlement... in a parish, which entitled a hired servant to pauper relief in that parish, was of no avail to the black.”

Cotter has pointed out that “Mansfield had not singled out former slaves for such treatment” since “the law was clear that no one could recover wages unless there was an actual agreement between the laborer and the person receiving the benefits.”

Regarding the right to settle, as early as the Elizabethan period, the poor laws explicitly forbade members of a parish from importing foreigners—from Ireland, Scotland or the Isle of Man. Moreover, a subsequent legislative overhaul of the bill stated that such outsiders seeking help had to return to their birthplace. Obviously it would have been both untenable and unlawful to ship Afro-Caribbeans back to their place of origin in Africa or the West Indies and this had not escaped Mansfield. The fact that such legislation would preclude blacks surely weighed heavily on his mind during *Somerset*, and accounted for his reluctance to emancipate before reforms were enacted. However, without any positive law amelioration, Mansfield had no alternative, and Howe, like many journeymen from the Celtic fringes, was denied poor relief and a home parish.

In 1786, one year after *Rex v. Ditton*, concerns over the increased number of black poor, like Charlotte Howe, led Sharp and the numerous struggling blacks of London to form “the committee for the relief of the black poor.” The board accepted a scheme to


358 14 Eliz. I, c. 5 (1572).
form a British colony in Freetown, Sierra Leone, on the West Coast of Africa. Hundreds of the black poor were to immigrate and settle in the area, where they would be offered better opportunities for education and gainful employment. The first expedition was delayed because rumors spread amongst the black communities of London that the Government intended to transport the participants to Botany Bay or a penal colony in Africa.\textsuperscript{360} Internecine administrative bickering between Vassa, the black Commissary, and Joseph Irwin, the Superintendent, led the Navy Board to dismiss Vassa in March of 1787. While his removal was probably racially motivated, it has also been argued that the British Government sought to forcibly deport many blacks in an attempt to maintain the pallidity of English skin.\textsuperscript{361} Braidwood has recently pointed out in \textit{Black Poor and White Philanthropists} that the government acted out of a sense of “humanitarianism springing from Christian convictions, by gratitude felt towards the blacks as loyalists, and by abolitionist sympathies.” Such racial aspirations are not only “unjust” to the Government, but condescendingly suggest that African participants were easily coerced into a “white conspiracy.” In fact, a group of concerned blacks first proposed the scheme and decided on the destination and the expedition was led by two respected Afro-Britons—Henry Smeathman and Joseph Irwin.\textsuperscript{362} While the initial settlement was a failure, Braidwood shows, its subsequent re-establishment in 1789, and the formation of the Sierra Leone Company in 1791, demonstrated that former slaves were capable of building a

\textsuperscript{359} 14 Charles II, c. 12 (1662).

\textsuperscript{360} Hoare, \textit{Memoirs}, 315.

\textsuperscript{361} Shyllon, \textit{Black People}, x, 117, 128; James Walvin, \textit{Slavery and the Slave Trade, A Short Illustrated History} (1983), 135.
sophisticated community. In addition to engaging in profitable trade, Freetown and the Company became beacons for spreading Christianity, while the distinguished schools in the township—notably Fourah Bay College—influenced the cultural development of British West Africa during the nineteenth century. Such educational opportunities led to employment for Sierra Leoneans in other British dependencies, and, at the same time, brought in crowds of other Africans. These achievements helped to establish a settlement that emerged as “a symbol in the abolitionist crusade” and a “centre...for the suppression of the slave trade.” As has been noted, *Somerset* had sparked the popular antislavery movement in England and the American colonies, and Braidwood sees the ruling by Mansfield “as of great importance” to the “settlement’s symbolic role” since many of these black settlers “obtain[ed] their freedom because of [the] judgment.”

III

It has been shown that the initial legal impact of *Somerset* led magisterial courts on two occasions to emancipate blacks who refused to be held as slaves. Also the successful antislavery case of *Knight v. Wedderburn* (1778)—during which the judgment by Mansfield was frequently cited—led to an even broader interpretation of black freedom in Scotland. Subsequent rulings about blacks by Mansfield involved the transatlantic trade, in the *Zong* and *Jones* cases, and a claim for back wages by a former slave, in *Rex v. Ditton*. Much has been made of four other post-*Somerset* judicial rulings which suggest that the verdict had little impact. A quarter of a century after *Somerset* in *Keane v. Boycott* (1795) a seventeen-year-old slave from St. Vincent, named Toney,

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362 Braidwood, *Black Poor*, 269, 270.

363 Ibid., 18, 22, 269-275.
entered into a five-year indenture which was upheld by Lord Chief Justice Eyre.\textsuperscript{364} Indeed, the case demonstrates that West Indian servants had forcibly signed temporary contracts before brought to England. A scheme of that kind was a legal technicality that had concerned Hargrave during the \textit{Somerset} trial. Had the contract been made in England, however, it would have been invalid “because as soon as a slave arrives here, the yoke of slavery is dissolved by operation of law.”\textsuperscript{365} Since this was the only legal challenge to an indenture, such arrangements were probably infrequent, and, obviously did not apply to the substantial Afro-British population already in England. Indeed, no contract for indentured servitude was ever compelled on any black residing in England during \textit{Somerset}.\textsuperscript{366} While Walvin and Shyllon have been quick to cite Keane, neither discusses the subsequent case of \textit{Williams v. Brown} (1802) in which the court made no such distinction for a former Grenadan slave since a perpetual “contract could not be considered as valid in England if the stipulation had been that the Plaintiff should serve the defendant for life...the plaintiff in the present case being” upon arrival in this country “as free as any one of us while in England.”\textsuperscript{367} Thus, even if colonial slaves imported after 1772 agreed to an indenture, it would be for limited not perpetual servitude. This was no different from similar arrangements between white apprentices or indentures and their masters. Considering that it was common for such whites to abscond, it seems likely that colonial blacks seized the opportunity to leave their master’s service once in

\textsuperscript{364} Keane \textit{v. Boycott}, 2 H. Bl. 511 (1795); quoted in Cattrell, \textit{Judicial Cases}, vol 1, 21.

\textsuperscript{365} Ibid., 21fn.

\textsuperscript{366} Cotter, “The Somerset Case,” 55.
England, only to never return to the full rigor of colonial bondage. Nevertheless, despite the ruling in favor of the plaintiff slave in *Williams*, the court had stipulated that, although “a freeman in all other parts of the world,” he was still considered a “runaway slave” in Grenada.\(^{368}\) Similarly a quarter of a century later, in the case of *The Slave Grace* (1827), Grace had voluntarily returned to Antigua with her mistress, Mrs. Allen, after serving her for a year in England. Because she had been a slave in Antigua, Grace was seized by a customs official as “she being a free subject of his Majesty was unlawfully imported as a slave from Great Britain in Antigua, and there illegally held and detained.” Both the Vice-Admiralty Court of Antigua and Lord Stowell released Grace. However, Stowell claimed “the temporary freedom thus acquired has ever been suspended upon the return of the slave; and slaves never have been deemed and considered as free persons on their return to Antigua, or the other colonies.”\(^{369}\) This geographical restriction of freedom in *Williams* and *Grace* has been used to deflate the significance of *Somerset* in England. However, since these cases applied only to slaves who returned to the colonies, they were legally inapplicable in Britain itself. Indeed, these suits were similar to the *Zong* and *Jones* cases in that they had no bearing on the judicial strength of *Somerset*.

In sum, there were limited instances after *Somerset* in which colonial slaves were illegally brought to England, and even sold. Only one questionable advertisement offering a slave for sale has been discovered since 1772; yet, some *ad hoc* underground activity surely took place. Nonetheless, such cases were the exception rather than the


\(^{368}\) 3 Bos. And Pul. 69 (1802), 41.

\(^{369}\) *The Slave Grace*, 2 Hagg. 94. (1827), 179-193.
rule. The post-\textit{Somerset} legal cases presented here demonstrate, on the one hand, that it is misleading when Walvin states that in all three cases involving blacks, Mansfield had ruled against them, thus affirming his sentiments concerning domestic slavery.\textsuperscript{370} Again, the \textit{Zong} and \textit{Jones} and \textit{Rex v. Ditton} cases had been outside the judicial yardstick of slavery in England. The same rationale applied to the \textit{Keane} and \textit{Williams} and \textit{Grace} suits. These actions showed that, if anything, a black indenture could not be held in perpetually once in the realm, and although colonial laws could re-enslave a black, because of the precedent of \textit{Somerset}, once on English soil he was free. Thus, the contemporary eighteenth-and-nineteenth century evidence demonstrates that the combined symbolic and legal significance of \textit{Somerset} ended \textit{de facto}, if not \textit{de jure} slavery in England.
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**V. Articles**


**VI. Dissertations**

Vita

David Kemp was born on 28 December 1969 in Russellville, Kentucky to Mr. and Mrs. Robert Lee Kemp. Mr. Kemp graduated *cum laude* from the University of Mississippi in 1993 with a B.A. in history. He is currently a member of the adjunct faculty in the department of history at Rider University in Lawrenceville, New Jersey.
END OF TITLE