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**Anatomy of the Somerset Case of 1772:  
Law, Popular Politics and Slavery in Hanoverian Britain**

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Anatomy of the Somerset Case of 1772: Law, Popular Politics and Slavery in  
Hanoverian Britain

By Kristi Gourlay

Thesis submitted to the Faculty of Graduate and Postdoctoral Studies in partial  
fulfillment of the requirements for the MA degree in History

University of Ottawa

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Abstract  
Anatomy of the Somerset Case of 1772: Law, Popular Politics and Slavery in  
Hanoverian Britain

Kristi Gourlay  
Submitted in 2010

Supervisor: Richard Connors

This thesis examines the Somerset Case of 1772 and considers it within its immediate social, political, and legal landscape. Legal and political reform and imperial debate ensured that the case would be important for the understanding of core English ideals such as property, slavery, liberty, humanity and natural rights. These issues coalesced in 1772 and provided the background against which Lord Mansfield reached his famous decision. Instead of contributing to the ongoing economic versus humanitarian debate in recent scholarship, this thesis seeks to uncover the genesis of these humanitarian sentiments, and show how humanist arguments became useful and important in late-eighteenth century legal and abolitionist thought. Popular political agitation, the proliferation of pamphlets, the circulation of ideas concerning the rights of man, and legal reformist argument throughout England and Scotland influenced the case and Mansfield's final decision. By considering the Somerset decision within its immediate social, political, and legal landscape, it is unmistakable that the case was a harbinger that abolition was to come in England.

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## Table of Contents

Abstract	..... ii
Acknowledgments	.....iii
Table of Contents	.....iv
INTRODUCTION	.....1
THE SOMERSET CASE: A HARBINGER THAT ABOLITION WAS TO COME IN ENGLAND	.....27
THE PAPER WARS: POPULAR POLITICS AND THE QUESTION OF ABOLITION IN LATE-EIGHTEENTH CENTURY ENGLAND.....	56
HABEAS CORPUS AND THE RIGHTS OF MAN: RE-THINKING SLAVERY DURING THE SCOTTISH ENLIGHTENMENT.....	85
CONCLUSION	.....111
Bibliography	.....118

## INTRODUCTION

In 1769 James Somerset, an African-American slave from Virginia, was brought to England by his American master, Charles Stewart, a customs officer from Boston, Massachusetts. Two years later Somerset ran away from Stewart, but was recaptured on November 26, 1771 and placed on the slave ship, *Anne and Mary*, bound for Jamaica, under the supervision of Captain John Knowles. Three individuals claiming to be Somerset's godparents, Thomas Walkin, Elizabeth Cade, and John Marlow applied for a writ of *habeas corpus* to the Court of King's Bench to prevent Somerset from being removed from England. Two days later, William Murray Lord Mansfield, Chief Justice of the Court of King's Bench granted the requested writ of *habeas corpus* ordering Knowles to bring Somerset to court, in order to decide if his detention on the slave ship was legal. Granville Sharpe, an humanitarian who had intervened in several previous slaves cases in England by helping enslaved individuals take their masters to court, supported the case and ensured that Somerset would be represented by a team of the most aspiring lawyers of the period – William Davy, John Glynn, Francis Hargrave, James Mansfield, and John Alleyne. The resulting court case, *Stewart v. Somerset*, lasted eight hearings and five months and generally questioned the entire institution of slavery in the British Empire and more, specifically whether or not slavery existed in England. When faced with the case, Lord Mansfield was reluctant to offer a categorical decision, knowing that his verdict would have major implications for the economic and legal systems of both England and its colonies, some of which relied heavily on slavery. However, neither side accepted a pre-trial settlement as an option; both saw the

Somerset Case as an opportunity to have a definitive decision on the legality, and morality, of slavery.

On June 22, 1772, Mansfield delivered his verdict in the Somerset Case, and his decision has been a subject of debate for historians. Such debate is compounded by the fact that there are multiple recorded versions of his decision. In all the editions, Mansfield's ruling fundamentally outlawed the private use of force, ensuring that a slave could not be forcibly carried out of England. Thus, his ruling placed slaves in England in a 'near slavery' status. The final determination, agreed upon by virtually every version of the decision, that slaves could not be forcibly removed from England, was so ambiguous that it could be widely interpreted. In recognition of this fact, abolitionists distorted the decision, declaring that Lord Mansfield had extinguished slavery in England. The resulting newspapers and pamphlet publications covering the case reported that Mansfield had abolished slavery in England. The legal precedent set by the Somerset Case, although heavily distorted, became a strong basis for future abolitionist movements throughout the British Empire. While it was believed, and argued by many, that Mansfield's ruling barred slavery in England, the slave trade was not actually abolished until 1807, and slavery as an institution was not eradicated in the British Empire until 1833. Both of these processes – abolition of the trade and then of slavery itself – were completed through acts of Parliament.

The Somerset Case is a pivotal event in British history, illustrating the position and intersection of empire, law, slavery, and society in the eighteenth century. Empire proved central to the debate as abolitionists understood that questioning slavery meant questioning the empire, and questioning control and where power lay within that

imperial and commercial world. Ideas about slavery and freedom were discussed amongst scholars throughout the entire empire. The perception of a united “empire” in eighteenth-century England was vague to middling sort and lower order Englishmen. English subjects considered themselves more as “English” than “British,” and saw the indigenous and enslaved people as the ‘other’ to their English status, distinguished by liberty and natural rights. But these concepts of liberty and natural rights were ideas that were discussed throughout the Empire, as Britons living in the Americas, Scotland, and Ireland understood these notions and their fundamental relationship with their imperial British identity. Many of these intricacies that made British subjects distinctly British were perceived to contrast with what Englishmen and women considered “French”. The noted historian Linda Colley has argued that it was the constant state of war with France that galvanized and coalesced many of the perspectives and qualities that made the English distinctly English.<sup>1</sup> As a result of this rivalry with France, England created the Bank of England to sustain wartime state spending and thereby created one of the most advanced economic systems of the period, and a dominant military machine. Moreover, it helped build in Britain a fiscal-military state.<sup>2</sup> Another detail that contributed to the uniquely English psyche was the fact that England had a small population. England was a geographically modest country, especially in comparison to other countries of the time like Germany and France. England, despite its small size and population, controlled a large part of the world. The country had not since the eleventh century had to deal with foreign war on English soil, and, as a result, the English took pride in their ability to act as a dominant power without the immediate fear of being conquered or having to fight

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<sup>1</sup> Linda Colley, *Britons: Forging the Nation 1707-1837* (New Haven, Connecticut: Yale University Press, 2009), 4.

<sup>2</sup> John Brewer, *The Sinews of Power* (Cambridge, Massachusetts: Harvard University Press, 1988).

battles in England. It was this sense of confidence verging on a sense of superiority that set them apart from other nations, and particularly, set the English apart from the indigenous and enslaved populations of their empire.

Linda Colley argues that the English defined themselves in contrast to the 'other.' Specifically, as Protestants against Catholics or the English against the indigenous and enslaved people that they conquered.<sup>3</sup> Although Englishmen saw themselves as superior to their colonized peoples of the British Empire, the colonies were essential elements contributing to the Empire's international prestige and power. It was important to keep these colonies in a subservient role, and this importance was exemplified by the outbreak of the American Revolution. If the state could not tax its subjects, it also meant that they could not call on colonial support in military conflict. Collectively, this meant that the Empire was not as powerful as the impression given by its geographical sprawl.<sup>4</sup> The Empire's inability to keep the American colonies subservient ensured that a war would eventually break out and the colonies would gain their independence. Thus, while Englishmen thought of themselves as superior to others in the British Empire, they knew that colonial inclusion in, and support of, the Empire was a critical element contributing to British strength in the mid- to late-eighteenth century.

The eighteenth century saw many changes for the British Empire, the most obvious being the transition from the First Empire to the Second Empire. As the West Indian merchants slowly lost their influence in Parliament, the imperial gaze shifted from the west to the east. Instead of expansion through migration, the Empire expanded

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<sup>3</sup> Linda Colley, 5.

<sup>4</sup> Paul Langford, *The Eighteenth Century, 1688-1815* (London: A. and C. Black, 1976), 166.

through acts of conquest. Although England conquered many areas and peoples in the Atlantic regions, namely the indigenous inhabitants of North America and the Caribbean, they established their presence in these areas through developing societies centred on people who were originally from England.<sup>5</sup> Thus, these inhabitants were English men who migrated to new colonies. The fact that these areas in the First Empire were increasingly populated with migrants who came from England meant that a dialogue was formed between Britons in England, and Britons in the colonies. People living in America, Scotland, Ireland, and England could develop perceptions of, and an affinity for empire, as they each believed they had a stake in its glory. While the view of a united Empire was lost on many of these individuals, they were united by the existence of common ideas and feelings about the state of the Empire. Nowhere is this more apparent than with the abolition movement that arose in the wake of the Somerset Case of 1772.

The second phase, characterized by some historians as the Second Empire consisted of acts of conquest, particularly in India. England was able to take over these areas through conquest by military strength, and integrated their systems of commerce and law with the native political and social systems. As a result there were varying degrees of despotic rule.<sup>6</sup> In the First Empire the existence of different laws and political systems resulted in a multitude of issues, including the existence of legal pluralities, as the laws of one area would intersect with the laws of Britain itself; a fine example of this process is the Somerset Case.

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<sup>5</sup> P. J. Marshall, *A Free though Conquering People* (Aldershot, Hampshire: Ashgate Publishing Ltd, 2003), 106.

<sup>6</sup> Ibid.

One key issue that the Somerset Case highlighted was the fact that multiple colonies with varying legal systems and with different political connections to London could cause ‘international’ issues, especially when the laws of two royal dominions collided. The English legal system consisted of the common law, and legislation (statutes) and other legal decisions put in place by Parliament, the Crown and the Courts. During the seventeenth century, legal power in England went from being centralized and controlled by the monarchy to a shared power between the monarchy and the parliament. Parliament demanded the right to check the power of the monarch in certain legal domains and to ensure the rights and liberty of the people. By the end of the seventeenth century, in the aftermath of the mid-century civil wars and the Glorious Revolution in 1688, Parliament assumed considerable control over law making in England. So much so, that in 1765, Justice Blackstone argued that the power of Parliament was absolute and that so long as the balanced constitution lasted, that Parliament was absolute and uncontrolled within reason.<sup>7</sup> Thus, when the Somerset Case came to court, the Parliament was the highest law-making body in England, but ironically, the Crown held supreme power over the colonies. In many ways this division of power led to the Somerset Case and later, as hindsight has shown, to the underlying tension that caused the American Revolution, because legal distinctions developed between Britain and her American colonies.

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<sup>7</sup> Jeffrey Goldsworthy, *The Sovereignty of Parliament* (Oxford, Oxford University Press, 1999), 183.

Furthermore, the transition to a more formally organized empire (post 1763)<sup>8</sup> is important for the discussion of slavery and abolition as there was a distinct relationship between the rise of industrial capitalism and the growth of the antislavery movement. Historians, such as Eric Williams and David Brion Davis, posit that the transition from mercantilism to laissez-faire capitalism with industrialism and free trade signalled the need for abolition. Williams' thesis has been a primary source of debate in scholarship, as historians such as Seymour Drescher believe, in contrast to Williams' argument, that the cessation of the slave trade was disastrous for the English economy.<sup>9</sup>

The principal historical question concerning slavery in recent scholarship now focuses on the issue of why abolition occurred when it did. For British historians who focus on slavery, the questions concentrate on why slavery was abolished in 1833, why the slave trade was abolished in 1807, and why the abolition movement formed in the 1780s. Historians such as Seymour Drescher<sup>10</sup>, Roger Antsey<sup>11</sup>, and Howard Temperley<sup>12</sup> argue that the abolition movement occurred, and slavery was subsequently abolished because of the work of English humanitarians, specifically from organized religious groups like the Saints and the Clapham Sect, which was led by William Wilberforce.

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<sup>8</sup> Christopher Alan Bayly, *Imperial Meridian: the British Empire and the World, 1780-1830* (New York: Longman, 1989), 75-192.

<sup>9</sup> Eric Williams, *Capitalism and Slavery* (Richmond: The William Byrd Press, 1944); David Brion Davis, *The Problem of Slavery in Western Culture* (Ithaca, New York: Cornell University Press, 1966); David Brion Davis, *The Problem of Slavery in the Age of Revolution, 1770-1823* (London: Cornell University Press, 1975).

<sup>10</sup> Seymour Drescher, *Capitalism and Antislavery: British Mobilization in Comparative Perspective* (New York: Oxford University Press, 1986); Seymour Drescher, *The Mighty Experiment* (Oxford: Oxford University Press, 2002); Seymour Drescher, *Abolition: A History of Slavery and Antislavery* (New York: University of Cambridge Press, 2009).

<sup>11</sup> Roger Antsey, *The Atlantic Trade and British Abolition, 1760-1810* (London: Macmillan, 1975).

<sup>12</sup> Howard Temperley, *British Anti-Slavery 1833-1870* (London: Longman, 1972).

This traditional understanding of the abolition of slavery – that slavery was abolished due to the work of British humanitarians – was approached by these noted historians following the publication of Eric Williams’ *Capitalism and Slavery* in 1944. Williams questioned traditional views and opinions concerning the role of humanitarians in the British abolition movement, and argued that slavery helped fuel British industrial capitalism in the late-eighteenth century and that it was abandoned when it was no longer economically beneficial. In *Capitalism and Slavery*, Williams linked the rise and fall of slavery to capitalism, mercantilism and industrialization. Specifically, that capitalists sitting in parliament had taken the place of the West India merchants, and exports had become more important than the re-export trade to colonies. Williams argued that “[i]n the new Parliament the capitalists, their needs and aspirations were paramount.”<sup>13</sup> Further entrenching his belief that economics was a key contributing factor towards abolition was his argument that the enslaving of Africans was not a geographical issue but an economic one. Slavery did not imply the inferiority of the Blacks, but the existence of Africa, and that the transition to free labour was economically advantageous for the British Empire. Instead of crediting the abolition of slavery to the humanitarian efforts of evangelicals, Williams was the first historian to argue that the importance of humanitarian efforts had been over-exaggerated and that it was primarily economic factors that led to the abolition of slavery. Britain needed to relocate the capital and labour efforts focused in the West Indies to other areas of the empire. Thus, when British capitalism depended on the West Indies, they defended slavery; when it became unproductive, they destroyed slavery. Williams’ views precipitated much debate as many historians thoroughly disagreed with his thesis.

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<sup>13</sup> Eric Williams, *Capitalism and Slavery* (Richmond: The William Byrd Press, 1944), 134.

Three historians who lead the debate against the Williams thesis were Howard Temperley, Roger Antsey and Seymour Drescher. Temperley was the first to challenge Williams. He argued instead that industrial and capitalist developments of the late-eighteenth and -nineteenth centuries were not harmful to the business of slavery, and that therefore attention should be focused on the efforts of the humanitarians. To prove this, he focused on the continued efforts of English humanitarians following the abolition of slavery in 1833 to extend internationally the abolition movement.<sup>14</sup> Roger Antsey was another historian who challenged Williams's thesis and championed the argument that humanitarians were responsible for the abolition of slavery. Antsey drew upon statistics of West Indian profitability, showing that West Indian plantation profits were not in decline.<sup>15</sup>

Seymour Drescher denied Williams' argument that the newly liberated sugar colonies remained profitable following emancipation. Drescher instead argued that after emancipation it became impossible for free sugar colonies to compete with slave-based economies like Brazil and Cuba. Most importantly, he argued that free labour was economically inferior to slave labour. He argued that the decline of sugar production in the years following apprenticeship<sup>16</sup> indicated that it was the consistent moral sway of abolitionist groups that led Parliament to extinguish the slave trade. In *The Mighty Experiment*, Drescher traces the inclusion of social sciences – political economy, demography, racial and epidemiological science<sup>17</sup> – into the growing politics of slavery, and sums his belief up by stating that the abolition of slavery “[i]n relative terms it may

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<sup>14</sup> Temperley, *British Anti-Slavery 1833-1870*

<sup>15</sup> Antsey, *The Atlantic Trade and British Abolition, 1760-1810*.

<sup>16</sup> Following the abolition of slavery, many sugar islands placed slaves in a five year apprenticeship program before they gained their freedom.

<sup>17</sup> Drescher, *The Mighty Experiment*, 6-7.

have been the most expensive international policy based on moral action in modern history.”<sup>18</sup> In *Abolition: A History of Slavery and Antislavery*, Drescher questions how nations with little slavery at home were capable of creating the highest percentage of chattel slavery in the world, and most importantly how new civil and political formations were able to turn public and political opinion against slavery at the peak of the institution’s economic performance. Relying on his previous arguments that humanitarians, and not economic downturn, were responsible for the abolition of slavery, he furthers this analysis by arguing that while slave resistance on slave ships did become more frequent, reducing the “potential magnitude of the slave trade” by one million Africans, that threat was not large enough to end slave shipping as the profits remained high.<sup>19</sup> Moreover, Drescher argued that the existence of both the Somerset Case and *Knight v Wedderburn*<sup>20</sup> limited the possible expansion of slavery in the Empire because of both legal determination in the cases as well as the fact the cases increased public attention on the institution of slavery.<sup>21</sup>

Another noted historian who contributed to the slave debate questioning whether slavery was abolished because of economic conditions or humanitarian efforts is David Brion Davis. Writing in response to Winthrop Jordan<sup>22</sup>, who argued that slavery developed as a response to racism upon encountering Africans for the first time while simultaneously a market for free labour opened up in western colonies, Davis wrote *The*

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<sup>18</sup> Ibid, 232.

<sup>19</sup> Drescher, *Abolition: A History of Slavery and Antislavery*, 116.

<sup>20</sup> *Knight v. Wedderburn* was a slave case that occurred in Scotland in 1778. It is sometimes referred to as the Somerset Case of Scotland. It will be covered in detail in chapter three.

<sup>21</sup> Drescher, *Abolition: A History of Slavery and Antislavery*, 109-111.

<sup>22</sup> Winthrop Jordan, *White Over Black: American Attitudes Toward the Negro, 1550-1812* (Chapel Hill: The University of North Carolina Press, 1968).

*Problem of Slavery in Western Culture* in 1966. In this impressive work, Davis argued that it was the abolition movements that needed historical coverage, not the existence of slavery, and traced the continuity of slavery from ancient to modern times.<sup>23</sup> In his second work on slavery, *The Problem of Slavery in the Age of Revolution 1770-1823*, Davis' analysis covers the Anglo-American scene with brief mentions of France, and Latin American areas. While the first few chapters deal with political and economic developments concerning slavery and abolition, Chapters four and five question ideas of Enlightenment principles and question who took part in abolition movements in both Britain and America. Chapters six to nine are particularly pertinent to this study as they deal with the antislavery movements of both Britain and America and their ideological functions and implications. Also very important to this study are the last couple chapters in which Davis writes about the existence of divine law and anti-slavery concepts of morality.<sup>24</sup>

The most recent addition to this debate is Christopher Leslie Brown's analysis entitled *Moral Capital: Foundations of British Abolitionism*. While Brown admits that capitalism had its part in the creation of abolitionist groups, he sets out to find other personal agendas, primarily asking why Britons, as individuals and groups decided to attack slavery and why they thought they could do it. Brown separates a revolution in human sensibilities that made people hostile towards slavery from those sentiments that made people act against slavery. He questioned what pushed individuals from 'moral opinion' to 'moral action.' Foremost, in this line of questions, what were the abolitionists trying to accomplish? Brown argued that some humanitarians saw

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<sup>23</sup> Davis, *The Problem of Slavery in Western Culture*.

<sup>24</sup> Davis, *The Problem of Slavery in the Age of Revolution, 1770-1823*.

economic gain. Others who took part in the movement hated how the slave trade affected society or the colonies, especially how it affected public morals in the Empire. Finally, many contributors saw it as a way to infuse Christian politics in to the Empire, making piety relevant and restoring moral authority to the Church and the State. Brown has successfully taken the slavery debate into a new phase, situating the subject more deeply within concepts of society and morality in eighteenth-century England.<sup>25</sup>

Other notable historians contributing to the history of slavery in England have been James Walvin, David Dabydeen, Gretchen Gerzina and Clare Midgley. Walvin's *The Black Presence*, published in 1972 was one of the first studies of slavery and the population of Blacks in England from 1555 to the 1860s.<sup>26</sup> Since then, with the exception of *Black Ivory: Slavery in the British Empire*, in which he argues that African slavery was important in the economic and social development of Britain, Walvin has focused on the history of slavery in America. Much of his analysis focuses on the life of a slave during middle passage, life on the plantation, slave religion, and treatment of slaves.<sup>27</sup> Another historian who is important to note on the topic of Blacks in England is David Dabydeen. Dabydeen is most famous for his several works of non-fiction, including his collection of poetry entitled *Slave Song*, the verse novel *Turner* which responded to the famous painting by J.M.W. Turner, *Slavers Throwing overboard the Dead and Dying – Typhoon coming on (1840)*, and his novel *A Harlot's Progress* which is also based on art work, as he tells the story of the slave boy found in Hogarth's series

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<sup>25</sup> Christopher Leslie Brown, *Moral Capital: Foundations of British Abolitionism* (Chapel Hill, North Carolina: The University of North Carolina Press, 2006).

<sup>26</sup> James Walvin, *The Black Presence* (New York: Schocken Books Inc, 1972).

<sup>27</sup> James Walvin, *Black Ivory: Slavery in the British Empire* (Oxford: Blackwell Publishers Ltd., 2001).

of six satirical paintings from 1732 of the same name. Much of his work challenges traditional representations of slaves.

Gerzina is perhaps best known for her work *Black London*<sup>28</sup>, in which she recounts the social life of many Blacks in eighteenth- and nineteenth-century London. She illustrates that many Blacks were prosperous and respected, and there were Black organizations, clubs, and churches. Simultaneously, she notes that many were beggars and thieves, and even more were slaves. In a society where there were both free and enslaved Blacks she outlines the fact that there were many who made a business of stealing free Blacks and selling them into slavery, which is important to this thesis as stealing free blacks and selling them into slavery ultimately resulted in slave cases questioning the legality of slavery in England, including the Somerset Case. Another historian who delves into the history of slavery to tell the story of a people usually excluded from main stream history is Clare Midgley. In *Women Against Slavery: The British Campaigns 1870-1870*, Midgley recounts the involvement of women within the popular abolition movements in Britain. Middle class British women campaigned against slavery because it was detrimental to the private sphere. Arguing that they were accepted amongst abolitionists because it was considered a family affair, she responded to David Brion Davis' assertion that middle class British women played a limited role in abolition. Midgley successfully outlines the motives, ideas and political strategies of women fighting against slavery.<sup>29</sup>

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<sup>28</sup> Gretchen Holbrook Gerzina, *Black London: Life Before Emancipation* (New Brunswick, New Jersey: Rutgers University Press, 1997).

<sup>29</sup> Clare Midgley, *Women Against Slavery: The British Campaign 1780-1870* (New York: Routledge, 1992).

Such works have created a vibrant scholarship which has done much to clarify the nature of the slave trade and the abolition movement too. But what of the case that galvanized the debate over slavery in England? Historians agree that the Somerset Case is an important event in the history of British abolition. It brought to the fore a century long conflict between early abolitionists and West Indian planters, questioning whether slavery actually existed within English borders. While historians like Folarin O. Shyllon<sup>30</sup> have argued that the Somerset Case abolished slavery in England, more recent scholarship has agreed that Lord Mansfield's decision in the Somerset Case went no further than prohibiting masters and traders from forcibly removing slaves from England. Although barring forcible removal was Mansfield's intent, the Somerset Case remains pivotal in its role as a spark for the abolition movement, and the fact that the issue went to trial at all proved it a harbinger that abolition was to come in England. Humanists throughout Britain were able to distort and manipulate this decision, spreading the idea that with one sweeping decision Mansfield had declared it immoral by nature and therefore abolishing the slave trade. For these reasons the Somerset Case has increasingly become a point of interest among historians in the last two decades. Historians such as James Oldham, Ruth Paley, Jerome Nadelhaft, George Van Cleve, and Stephen Wise have dedicated books, articles, and chapters to deciphering the ambiguous Somerset Case. Before considering the case itself, it's perhaps helpful to discuss the newest historiography and shed light on recent historical thinking on Somerset and Mansfield.

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<sup>30</sup> Folarin O. Shyllon, *Black Slaves in Britain* (Oxford: Oxford University Press, 1974).

In *The Mansfield Manuscripts and the Growth of English Law in the Eighteenth Century*, James Oldham covers the career of one of the most influential legal figures of eighteenth-century England, William Murray Lord Mansfield. In his chapter concerning slavery, Oldham offers a detailed consideration of the decision made by Murray and explains how when the case was brought to court in 1771, the state of law and the existence of slavery was not predetermined nor clear, and that while Mansfield's decision ensured only that slaves could not be forcibly removed from England, it gave other slaves the ability to assert their own freedom. Moreover, it also gave humanitarians the tool they needed to push for abolition. Oldham's study is pertinent to this thesis since he studies the multiple accounts of Mansfield's final decision, and while many accounts, most famously Capel Lofft's reports, contain liberal wording, the core idea of Mansfield's final decision is present in each account. Furthermore, Oldham posits that Mansfield understood the nature of the Empire and the disastrous effects abolition would have on its utility and unity, but still bravely rendered a decision, true to his form, that opposed acts of cruelty and oppression.<sup>31</sup>

Ruth Paley's study of the Somerset Case, particularly her chapter from the book *Law, Crime and English Society, 1660-1830*, entitled "After Somerset: Mansfield, slavery and the law in England, 1772-1830" and her article "Imperial Politics and the English Law: The Many Contexts of Somerset" illustrated the effect of the Somerset Case on law, looking at the English cases concerning slavery that took place after Somerset in 1772. Moreover, she makes it clear that many important issues of slavery

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<sup>31</sup> James Oldham and William Murray Mansfield, *The Mansfield Manuscripts and the Growth of English Law in the Eighteenth Century* (Raleigh: University of North Carolina, 1992).

and the empire were ignored by Mansfield in his final decision because they threatened the Empire's unity. Paley argues that the Somerset decision had little impact on the everyday life of slaves in England, as they still remained in legal bondage. She makes an even more interesting point, by outlining how the decision made by Mansfield came to mean something more, as humanitarians like Sharp and Clarkson twisted it to their own advantage. As a result, it became a contentious issue for British colonies, most importantly the American colonies, who saw issues of fugitive slaves and colonial relationships at the centre of debate.<sup>32</sup>

The effect of the mythologized interpretation of Mansfield's decision on the American colonies has also been studied by Jerome Nadelhaft. In his article "The Somersett Case and Slavery: Myth, Reality and Representation" Nadelhaft argued that the misinterpretation of Mansfield's decision in newspapers throughout the colonies ensured that future generations misunderstood the final ruling, believing that 14,000-15,000 slaves were automatically freed upon the final decision, and that any district that did not have a positive law ensuring the existence of slavery meant it was unlawful. Nadelhaft attacked Capel Lofft's court reports, arguing that they were influenced by his own liberal ideas concerning slavery, and that the arguments spoken by, and later published by, Francis Hargrave were inserted into Lord Mansfield's final decision. Nadelhaft traces the importance of Lofft's reports and their influence on the foundation of the United States, in decisions like the Northwest Ordinance, and the Federal

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<sup>32</sup> Ruth Paley, "Law, Crime and English Society, 1660-1830," in *Law crime and English society*, ed. Norma Landau (New York: Cambridge University Press, 2002); Ruth Paley, "Imperial Politics and the English Law: The Many Contexts of Somerset, Law and History Review," *Law and History Review* Vol. 24, No. 3 (Fall 2006): pp. 659-664.

Constitution which were replete with mentions of Mansfield's decision. Moreover, influences of the Somerset Case and the mistaken decision by Mansfield can be seen in famous nineteenth-century American court cases such as the Dred Scott case, and *Prigg v. Pennsylvania*. Nadelhaft reveals the continuation of the Somerset myth originally created by Lofft and other humanitarians and traces its evolution through American history.<sup>33</sup>

Moreover, George Van Cleve explored the larger legal implications of the Somerset Case, contending that Mansfield's holding purposefully undermined slavery throughout the Empire by drawing precise distinctions between English and colonial laws on slavery. In his article "Somerset's Case and Its Antecedents in Imperial Perspective" Van Cleve connects both socio-historical and legal-historical understandings of slavery to better understand the state of the law on slavery before the Somerset Case, and he looks at the case as an "imperial conflict of laws" case. Van Cleve argues that Mansfield's decision headed by domestic, imperial and personal motives, was meant to eliminate slavery litigation in the English courts and reserve the debate for parliament, and in doing so, purposely avoided an imperial governance problem that would have arisen from a pro-slavery decision, but simultaneously negatively impacting colonial slaveholders.<sup>34</sup>

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<sup>33</sup> Jerome Nadelhaft, "The Somersett Case and Slavery: Myth, Reality, and Repercussions." *The Journal of Negro History* 51, no. 3 (July, 1966): 193-208.

<sup>34</sup> George Van Cleve, "Somerset's Case and Its Antecedents in Imperial Perspective," *Law and History Review* 24, No. 3 (Fall 2006): pp. 601-646.

The legal historian Steven Wise's *Though the Heavens May Fall: The Landmark Trial That Led to the End of Human Slavery*, is one of the greatest contributions to the study of the Somerset Case. Wise's analysis tells the story of the legal cases leading up to 1772, and pays particular attention to *Lewis v. Stapylton*, the slave case that occurred in 1771 and was also judged by Lord Mansfield. Wise's work is most important for his account of the specific details of the case itself, while simultaneously looking at the political and economic issues that played a role in the decision.<sup>35</sup> Moreover, Wise looks at the social, financial, and political ramifications of the decision on the entire British Empire. Wise illustrates how Somerset's counsel framed the legal question to Mansfield on the idea of sovereignty – whether the laws of the colonies could be binding on England. Wise successfully articulates how Somerset's counsel framed their arguments, and how Mansfield came to the final decision that slaves could not be forcibly removed from England.<sup>36</sup>

In order to better understand the Somerset Case and surrounding contemporary arguments, it is pertinent to place it within the context of mid-eighteenth century English society from which it came. In the 1760s, John Wilkes and his followers, the Society of the Supporters of the Bill of Rights (SSBR), ensured that the middling sort could enter the political sphere and voice their opinions.<sup>37</sup> The Wilkesites attempted to shake the foundation of the legal and political system by illustrating the seemingly arbitrary nature of the English legal system. The Wilkesites were interested in electoral, economic, and

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<sup>35</sup> Steven Wise, *Though the Heavens May Fall: The Landmark Trial That Led to the End of Human Slavery* (Cambridge: Da Capo Press, 2005).

<sup>36</sup> *Ibid.*

<sup>37</sup> Paul Langford, *A Polite and Commercial People: England 1727-1783* (Oxford: Oxford University Press, 1989).

social reform. They sought and used the law to redeem their grievances.<sup>38</sup> Following the Wilkesite movement, there was a high level of political interest in society, and the SSBR illustrated that the middle class person – a propertied individual – had a stake in the nation and thus had the right to voice their opinion. The SSBR and their followers ensured that political questions could and would be asked, successfully clearing the way for political campaigns, including the abolition of slavery movement, to take place in late-eighteenth-century Britain.<sup>39</sup>

With this new found political presence inspired by the Wilkesite movement, these avenues of communication were taken advantage of by abolitionists and other philanthropists in London, Philadelphia, and Edinburgh. Slavery, abolition and legal issues came to the attention of thinkers and activists, and these people were able to expand the size of their audiences, rather than being limited to only the colony or town in which they lived. As these avenues became more powerful, and the messages more frequent, the position of the middling sorts became more influential. Scottish Enlightenment figures such as Adam Smith, David Hume, Adam Ferguson, John Millar, Francis Hutcheson, and George Wallace had enormous effects on the scholarship and principles of mid-eighteenth-century Britons. Debate and discussions on politics, morality, society, laws, and economics were sparked by these great thinkers, and affected both the conduct of imperial governance and views of Britons on how the

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<sup>38</sup>John Brewer, *Party Ideology and Popular Politics at the Accession of George III* (Cambridge: Cambridge University Press, 1981); John Brewer and John Styles, *An Ungovernable People: The English and their law in the seventeenth and eighteenth centuries* (New Brunswick, NJ: Rutgers University Press, 1980).

<sup>39</sup>John Brewer, *Party Ideology and Popular Politics at the Accession of George III*, 164-176. These concepts will be further discussed in the second chapter.

Empire should be run. These enlightened ideas of society and morality were important for the arguments developed by the abolitionists, especially for thinkers from Philadelphia like John Wesley and Benjamin Rush. The works of these men were heavily influenced by the Scottish enlightenment as concepts of natural rights and the rights of men were central to their arguments.

Finally, English men like Granville Sharp, and later William Wilberforce and Thomas Clarkson were heavily influenced by these avenues of communication throughout the Empire as the idea that Blacks were humans was a belief that was strongly argued by all these men as they demanded abolition within the Empire. Thus, while some historians including Linda Colley argue that there was no sense of an united “British” identity within the Empire during the late-eighteenth century, Englishmen, primarily the middling sorts were influenced by people throughout the Empire in many ways. Arguments that they were presented with by English scholars were, in many cases, influenced both by men writing in Scotland and in the American Colonies.

Men throughout the empire took advantage of this increase in written material with political agendas and that ensured the middle class grew powerful and had a voice in the late-eighteenth-century governance of England. Simultaneously, the sentiment throughout Britain that Englishmen were defined by liberty and notions of natural rights ensured that when pamphlets were written describing the horrendous treatment of slaves by planters and traders who were sanctioned by the English Parliament, people were bound to react negatively.

The Somerset Case exists as the intersection of all these eighteenth century developments; empire, law, slavery, and civil and polite society. The bulk of the slavery

debate has been focused on the question of why slavery ended. Sparked by the work of Eric Williams and his thesis that the abolition of slavery was directly linked to economics because the institution of slavery was not profitable by the early nineteenth century, other historians like Seymour Drescher have argued the importance of the humanitarian efforts. Instead of looking at the economic versus humanitarian debate, this thesis seeks to uncover where the humanitarian sentiment came from, and how humanist arguments became useful and important in the late-eighteenth century. Moreover, it seeks to trace the evolution of these social and legal developments that allowed for the abolition movement to emerge. Instead of looking at the years that followed the Somerset decision, this thesis considers the immediate social, political, and legal landscape upon which it was contested.

The first chapter focuses on the evolution of slave law in seventeenth- and eighteenth-century England. In order to better understand the significance of the Somerset Case it is important to take into consideration the several disputes over slavery that occurred in England before 1772. The judgments in the slave cases prior to the Somerset Case – the Cartwright Case (1569), *Butts v. Penny* (1677), *Chamberline v. Harvey* (1696), *Smith v. Gould* (1701) and *Smith v. Brown and Cooper* (1705), the Yorke-Talbot Opinion (1729), *Pearne v. Lisle* (1749), *Shanley v. Harvey* (1762), and *Lewis v. Stapylton* (1771) – continuously provided inconsistent and contradictory legal opinion on whether slavery rightfully existed in England. While each of these cases occurred prior to Somerset, they attempted to create a precedent. Yet, the existence of the slave trade was too powerful for a single legal decision to take hold and categorically resolve the issue itself. Between the sixteenth and late-eighteenth

centuries, a continuous battle was fought between moralists who saw the slave trade as detrimental to society and the West India merchants and planters who relied on the economic advantages of the trade for their power and their profits.

An analysis of the Somerset Case – through the arguments presented on both sides – displays how concepts of morality, liberty, and legal right were sewn through the entire case. The conflict between morality and property that existed in previous case law was revisited in the Somerset Case. There are four contemporary accounts of Mansfield's decision that will be discussed in chapter one, and although each contains different dictum, they each report that Somerset was discharged because there was no law – whether through common practice or positive law – that made slavery legal. Mansfield's final decision in the Somerset Case was largely a product of these earlier opinions, as he declared that slavery could only be confirmed by positive law. The Somerset Case existed in order to push the question of slavery, increasingly seen as a critical debate between the rights of property and of morality, from the courts into Parliament itself.

The second chapter focuses on why the Somerset Case has become such a landmark legal trial. Instead of questioning whether slavery was abolished or whether the abolition movement was created because of economic or humanitarian reasons, this chapter asks the question: what were the social and legal developments that led to the formation of humanitarian groups? What changed in society that allowed and inspired middling sorts to demand change and act against the slave trade? Moreover, it also takes into consideration the fact that those opponents of the abolition movement, individuals

that supported the slave trade, were able to take advantage of these societal changes to promote their own agendas.

This chapter concentrates on three key social and political developments of the eighteenth century. First, it will look at the growth of popular politics encouraged by John Wilkes and his radical extra-parliamentary group, the Society of the Supporters of the Bill of Rights (SSBR). The reformist ideas that Wilkes and the SSBR raised gave the middling sort a political and social voice, as they were the embodiment of the power of the pen. Through a series of scandals, the Wilkesites sought to illustrate that the political and legal system in England was corrupt. In the late 1760s and early 1770s, there was a high level of political interest concerning the debate on legal and economic reform.<sup>40</sup> Wilkes and the SSBR accelerated the growth of the public discourse on the rights of individuals that was emerging in the late-eighteenth century, as well as the acceptance of political dissent, the growth of rights of man, as well as the burgeoning status of the middling sort. These changes had deep implications for the social and political hierarchy. The most important outcome of the Wilkesite efforts was that they ensured political questions could be discussed and debated by members of society who did not hold official positions in government nor own substantial quantities of property. The SSBR successfully cleared the way for political campaigns – like the abolition of slavery – to take place in a large public forum and become more popular through newspapers and pamphlets.

The second element of this chapter centres on the growth in written material. Because of the work of the Wilkesites, there was a proliferation of mass-produced print and popular literature in public. As a result, readers were able to share opinions, and

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<sup>40</sup> John Brewer, *Party Ideology and Popular Politics at the Accession of George III*, 176.

learn of other peoples' first-hand accounts of political and social issues. Thus, they could empathize with the life experiences of other people, including those affected by the brutality of the slave trade.

The third and final development that contributed to the shift in society and thinking on slavery was the rising acceptance of 'human rights'. The conception of 'human rights' has origins in the late-eighteenth century in the midst of the Enlightenment as Europeans developed a discourse of universal equality inherent in human beings. Drawing on the recent work of Lynn Hunt, this chapter focuses on how reading accounts of torture ultimately emotionally affected the reader, and resulted in the development of new political and social concepts and movements in the eighteenth century. Thus, the growth of written material in the eighteenth century – firsthand accounts of slaves and slave traders – affected existing concepts of humanity as readers began to identify with personal accounts from other human beings – Black slaves.<sup>41</sup>

This chapter suggests that the growing concern for the human body, influenced by the growth in literature also aided the abolition movement as newspaper accounts and the proliferation of pamphlets describing the plight of African slaves spread throughout Britain. As readers of these accounts began to empathize with slaves, the middling sorts, seized upon what John Brewer has coined an 'alternative structures of politics,' protests, pamphlets, and the press, all of which gave them a powerful voice, and a public arena within which to debate the merits of abolition with those who championed the slave trade.

The third chapter considers the state of the Empire and how avenues of communication allowed for England to influence its colonies, and more importantly how

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<sup>41</sup> Lynn Hunt, *Inventing Human Rights*, (New York: W.W. Norton & Company, Inc, 2007), 33-34.

developments in areas outside of England, specifically in Scotland, were able to affect politics and legal decisions within London. The Union of England and Scotland in 1707 allowed for a more tightly-knit intellectual interaction, as scholars from Scotland were able to penetrate London society, and find their ways into English legal and political positions. Ideas about laws, slavery, natural rights and freedom flowed between borders and culminated in the genesis of truly British ideas on these subjects. The Somerset Case was important because it combined ideas present within the British state concerning emancipation and freedom. In order to understand the idea of empire and the importance of these avenues of communication between its people it will be relevant to look at the discussion occurring throughout the Empire. Following the Somerset Case, the number of pamphlets concerning slavery grew exponentially, but even before 1772, anti-slavery opinions were present. The transatlantic abolition group headed by Philadelphia Quaker Anthony Benezet as well as scholarly writers primarily from Scotland – including Adam Ferguson, Adam Smith, John Millar, David Hume, Francis Hutcheson, and George Wallace – made the issue of slavery common amongst their writings. The transatlantic abolition group formed in the 1770s consisted of Anthony Benezet, the English humanitarian Granville Sharp, the American republican and staunch abolitionist Benjamin Rush, the Christian theologian John Wesley, and the English physician John Fothergill. These five men began writing back and forth, and appropriating each other's pamphlets on abolition and slavery in the British Empire. The five routinely updated each other concerning advancements in the abolition movement in their locales as well as details of how they might organize their pamphlets. It is particularly striking that the ideas developed in the works of the Anglo-American

abolitionist group were inspired by the writings of Scottish intellectuals. Aspects of this process will be considered here too.

Furthermore, a consideration of the Scottish legal and social situation concerning slavery shows that the Somerset Case was possibly not the inspiration to cease slavery in Scotland, but that Scotland was by the mid-eighteenth century more likely than England to abolish slavery within its borders. Scottish Common Law and the perception of *habeas corpus* (known as wrongous imprisonment) in Scotland allowed for a clearer legal notion of liberty for its subjects. Moreover, the conception of ‘wrongous imprisonment’ that developed in Scotland in the late-seventeenth century/early-eighteenth century possibly influenced the understanding of *habeas corpus* offered by Lord Mansfield in the Somerset Case. Therefore, it can be argued that eighteenth century intellectual arguments by Scottish legal theorists influenced the legal atmosphere in London, resulting in a more liberal conception of the rights of man and his position in law.

These concepts are considered in turn and collectively seek to re-orientate our thinking about, and appreciation of the Somerset Case and Mansfield’s decision in the early 1770s. It was within those specific, if ironically ambiguous, eighteenth-century contexts that the issues of law, property, slavery, humanity and natural rights, coalesced and helped Mansfield reach the decision he did. Contemporaries like Clarkson, Wilberforce and Somerset himself realised that point, and we, as historians, would do well to understand that too. It is in that spirit that this thesis revisits the Somerset Case.

## CHAPTER 1

### THE SOMERSET CASE: A HARBINGER THAT ABOLITION WAS TO COME IN ENGLAND

In order to better understand the significance of the Somerset Case it is important to immediately recognize that numerous disputes over slavery had occurred in England before 1772. As the historian George Van Cleve correctly indicated in his article “Somerset’s Case and Its Antecedents in Imperial Perspective,” “No statute enacted between 1540 and 1780 spoke directly to the legal status of slaves brought to England, so the fate of slaves there was left to the courts and the common law.”<sup>1</sup> The judgments in the slave cases prior to the Somerset Case – the Cartwright Case (1569), *Butts v. Penny* (1677), *Chamberline v. Harvey* (1696), *Smith v. Gould* (1701) and *Smith v. Brown and Cooper* (1705), the Yorke-Talbot Opinion (1729), *Pearne v. Lisle* (1749), *Shanley v. Harvey* (1762), and *Lewis v. Stapylton* (1771) – continuously resulted in inconsistent legal opinion on whether slavery existed in England. While verdicts and determinations sought to create a precedent, the influence of the slave trade was too powerful for a single court decision to establish precedent. As slavery was becoming a major moral issue in society throughout the late-eighteenth century, it competed against the great economic interests of the West India merchants and planters.

An analysis of the Somerset Case – the arguments presented on both sides – will display how concepts of morality, liberty, and legal right were sewn through the entire case. The increasing existence of sentimentality versus the concept of property, combined with the two diverging maxims formed by these previous court cases and opinions –

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<sup>1</sup> George Van Cleve, “Somerset’s Case and Its Antecedents in Imperial Perspective,” *Law and History Review* vol 24, no 3 (Fall 2006): 609.

entitled slaves ownership and freedom through abolition – presented a growing dichotomy that needed to be rectified. The Somerset Case has been understood as the origin of British abolition. However, through an analysis of earlier case law, it is evident that the case was more the indication of what was to come, it was a harbinger of abolition. The final ruling of the Somerset Case was largely a product of these earlier opinions, as Mansfield held that slavery could only be confirmed by positive law. The Somerset Case existed in order to push the question of slavery, increasingly seen as a critical debate between the rights of property and of morality, from the courts into Parliament itself.

Prior to the Somerset Case, there was no clearly defined law that addressed the question of whether or not slavery existed in England. Nevertheless, these cases are revealing and worth further consideration here. Since the Cartwright Case of 1569, opinions of lawyers and final decisions in slave cases both refuted and supported the existence of slavery. Although there are only a few surviving reports on the case, it is believed that an English man named Cartwright brought a Russian slave to England, where he savagely beat the slave. When he was brought to court for battery, Cartwright stated that it was not an unlawful action because the man he beat was not a man, he was a slave. Cartwright was found guilty, as the severity of his whippings surpassed what was lawful. The legacy of the Cartwright Case extends beyond its decision. The case was relied upon in the Lilburne and Wharton case in 1647, a case that dealt not with the issue of slavery, but with assault and battery. When John Lilburne was committed to Gate-House by John Lamb for sending scandalous books to Holland, he was severely whipped.

In court, the severity of his whipping was questioned and the reports stated that a Mr.

Cook defended Lilburne claiming that:

Whipping, a most painful and shameful punishment; flagellations and scourgings being for slaves and incorrigible rogues, and hedge-robbers. In 11 Elizabeth one Cartwright brought a slave from Russia, and would scourge him cruelly, for which he was questioned; and it was resolved, that England was too pure an air for slaves to breathe in; and it was often resolved in the Star-Chamber, that no gentleman was to be whipped for any offence whatsoever: it being well known that John Lilburn's ancestors have been ancient gentlemen, and that which these Judges could not be ignorant of, especially the Earl-Marshal, who is presumed to know all the ancient gentry in the kingdom.<sup>2</sup>

Lilburne's case, like the Cartwright Case, was concerned with the treatment of another person and not whether slavery existed in England. In the Lilburne case the severity of the whippings surpassed what was deemed lawful. The Cartwright Case however, would supply an important observation relied upon by Mr. Cook in the Lilburne case, as well as lawyers in future slave cases throughout the eighteenth century in England. In his final holding, the judge ruled, "that England was too pure an air for slaves to breathe in"<sup>3</sup> In subsequent centuries, scholars and lawyers would disagree on what he meant by this ruling. One side believed that he intended the total emancipation of slaves; the other believed that he wished to limit the right of masters to assault their slaves.<sup>4</sup> Future abolitionists used both these interpretations to their advantage, relying most heavily on the former. The pronouncement that England's air was too pure for a slave to breathe became the first significant legal maxim of the English position on slavery. This ambiguous determination would continuously resonate in future court decisions,

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<sup>2</sup> Thomas Bayly Howell, Thomas Jones Howell, William Cobbett, and David Jardine, *Cobbett's Complete Collection of State Trials and Proceedings for High Treason and Other Crimes and Misdemeanors* (London, 1824), 1353-1354.

<sup>3</sup> Ibid, 1354.

<sup>4</sup> Van Cleve, 33.

including the Somerset Case.

In the two centuries separating the Cartwright and Somerset Cases, most courts and legal authorities recognized the ambiguous state of slaves in England. Slaves who came to England were governed under English law. They were still denied emancipation, but were not considered chattel either.<sup>5</sup> This legal ambiguity became clear in two late seventeenth-century cases and two early-eighteenth-century court cases, *Butts v. Penny* (1677), *Chamberline v. Harvey* (1696), *Smith v. Gould* (1701) and *Smith v. Brown and Cooper* (1705), where slaves challenged the legality of masters to own slaves in England. *Butts v. Penny* was the earliest recorded slave case. Although the slave's council, Thompson, argued that ownership of another human could only be possible through conquest or compact, the judge ruled that trover would lie for a slave because slaves were bought by merchants as merchandise.<sup>6</sup> This ruling paid no awareness to the idea that Blacks were human, and instead supported the claim of masters and traders, that they had legal property in their slaves as chattel goods. Following the 1677 case, three cases were presided over by Chief Justice John Holt.<sup>7</sup> Each case concerned a slave brought to England from the colonies, and the question of whether, upon entering England, they were still enslaved or were entitled to freedom. In *Chamberline v. Harvey*, the question arose as to whether slaves being brought into England from Barbados remained slaves and if the master would receive compensation for the loss of his slave's service while in England. Lord Holt ruled that a master could only recover for the loss of his slave's service, but not for value of the servant or the damages done to his servant while in

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<sup>5</sup> Ibid, 31.

<sup>6</sup> *Butts against Penny*, 83 ER: 518.

<sup>7</sup> On Lord Chief Justice John Holt, see Oxford Dictionary of National Biography, Paul D. Halliday, "Holt, Sir John," Oxford University Press 2004-9.

England.<sup>8</sup> Thus, with his ruling, Holt ensured that the importation of slaves into England would prove to be costly for masters.

In *Smith v. Gould*, Lord Holt affirmed that trespass was available, permitted English slave owners to have a vague concept of control over their slaves, and rejected classical chattel slavery. The reports state that “it was moved in arrest of judgment, that trover lay not for a negro, for that the owner had not an absolute property in him; he could not kill him as he could an ox.”<sup>9</sup> Holt stated, “Men may be the owners, and therefore cannot be the subject of property.”<sup>10</sup> With this holding, Holt implied that slavery did not exist in England. Holt strengthened his ambiguous stance from *Smith v. Gould* in *Smith v. Brown and Cooper*, stating that “as soon as a negro comes into England, he becomes free: one may be a villein in England, but not a slave.”<sup>11</sup> In this case, Holt explained that the prosecutor, Smith, should have argued that the slave contract was created in Virginia. The records report that Holt directed the plaintiff to,

amend, and the declaration should be made, that the defendant was indebted to the plaintiff for a negro sold here at London, but that the said negro at the time of sale was in Virginia, and that negroes, by the laws and statutes of Virginia, are saleable as chattel.<sup>12</sup>

While Justice Holt advised the plaintiff that he should have argued that the slave contract occurred in Virginia – a legal fiction which allowed the sale of slaves in England – he maintained that slavery did not exist in England. His acknowledgement of the master’s right through the existence of slavery in the colonies highlighted the fragility of the position of slavery within the Empire. Holt made an important establishment in this case,

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<sup>8</sup> *Chamberline against Harvey*, 87 ER: 598.

<sup>9</sup> *Smith versus Gould*, 2 Salkeld. [667], 91 E.R: 567; 2 Ld. Raym. 1274, S. C.: pp. 567

<sup>10</sup> *Smith versus Gould*, 2 Salkeld. [667], 91 E.R: 567; 2 Ld. Raym. 1274, S. C.: pp. 567

<sup>11</sup> *Smith versus Brown and Cooper*, 2 Salkeld. [666], 91 E.R: 566-567; 2 Ld. Raym. 1274: pp. 566

<sup>12</sup> *Smith versus Brown and Cooper*, 2 Salkeld. [666], 91 E.R: 566-567; 2 Ld. Raym. 1274: pp. 566

by stating that the English Common Law and the law of the colonies were independent from one another.<sup>13</sup> He recognized the existence of legal pluralities and substantiated a legal rationale for the colonies to have slavery, but not England.

Although these earlier cases held that slavery did not exist in England, the affirmation of the African slave trade influenced merchants, planters, and many others to insist slavery was acceptable if not legally sanctioned. Thus, the exact law on whether slavery existed in England became increasingly unclear in the early-eighteenth century. Afraid of bringing slaves to England, using force against them, and the possibility of being taken to court, planters and merchants approached two of the most prominent legal officials of the Walpolean period, the Attorney General Philip Yorke and the Solicitor General Charles Talbot. In 1729, the two crafted the “Yorke-Talbot Opinion.” Their ruling stated:

‘We are of opinion, that a slave by coming from the West Indies into Great Britain or Ireland, either with or without his master, does not become free, and that his master’s right and property in him is not thereby determined or varied, and that baptism doth not bestow freedom on him, not 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.’<sup>14</sup>

The planters and merchants praised the ruling, promoting the two men as the greatest legal figures of the period with unassailable legal authority. Those involved in the slave trade received a legal approval ensuring the continued existence of their property and trade. The opinion guaranteed three maxims for slaveholders: a slave’s status would not change when brought to England; that a master could force a slave to return to the

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<sup>13</sup> Van Cleve, 62.

<sup>14</sup> Thomas Clarkson, *The History of the Rise, Progress, and Accomplishment of the Abolition of the African Slave-Trade by the British Parliament* (London: John W. Parker, West Strand, 1786), 55-56.

colonies; and the eradication of the belief that baptizing a slave ensured manumission.<sup>15</sup> The religious belief that a baptized Christian could not be enslaved was common, and resulted in the baptism of many Blacks. With their infamous opinion, Yorke and Talbot established the idea of an ‘imperial property.’<sup>16</sup> With this judgment, the two held that a slave was a form of property and remained a slave in every legal jurisdiction.

For the next forty-three years, slave holders would cite the “Yorke-Talbot Opinion”, maintaining that slavery existed in England. Conversely, abolitionists would refer to the earlier holdings by Holt asserting that slaves became free upon entering England. These diverging views reflect the lack of clarity in the slave law prior to the Somerset Case. The following slave cases – *Pearne v. Lisle*, *Shanley v. Harvey*, and *Lewis v Stapylton* – wavered between these two opinions. In *Pearne v. Lisle (1749)*, Lord Chancellor Hardwicke attempted to defend his earlier judgment, and discredit the rulings of Holt in the *Smith v. Gould* and *Smith v. Brown and Cooper* cases. Pearne, an English resident, had taken his slave, Lisle, from Antigua to England. After Lisle attempted to run away, Pearne brought him to court to ensure his slave status. In his final decision, Hardwicke rejected the right of the slave to leave his master and ruled that Antiguan law – and to a much larger extent, colonial law – must replicate English law. Lord Hardwicke stated:

That the moment a slave sets foot in *England* he becomes free, has no weight with it, (3) nor can any reason be found, why they should not be equally so when they set foot in *Jamaica*, or any other *England* plantation. All our colonies are subject to the laws of England, although as to some purposes they have laws of their own.<sup>17</sup>

Hardwick used the “Yorke-Talbot Opinion” to demonstrate that English law, like colonial

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<sup>15</sup> Van Cleve, 45

<sup>16</sup> *ibid*, 62.

<sup>17</sup> *Pearne against Lisle*, Amb. [77], 271 E.R: 47.

law, permitted slavery.<sup>18</sup> With this assertion, Hardwicke refuted Holt's holding which structured the legal pluralities allowing slavery to exist in the colonies, and not in England. Reaffirming his earlier opinion, he ruled that a slave's status remained unaltered in every legal jurisdiction.

In 1762, Lord Northington presided over *Shanley v. Harvey*. The prosecutor, Edward Shanley, esquire, was the executor of a deceased Margaret Hamilton's will. Shanley had brought Harvey to England twelve years earlier and had given him to his niece Margaret, who had him baptized. On the night of July 9, 1752, she directed Harvey to get her purse, and said, "Here, take this, there is £700 or £800 in bank notes, and some more in money, but I cannot directly tell what, but it is all for you, to make you happy: make haste, put it into your pocket, tell nobody, and pay the butcher's bill." He then knelt down and thanked her. She said. 'God bless you, make a good use of it.'<sup>19</sup> Shanley maintained that since Harvey was a slave, he should surrender the money that he had received from Hamilton. In his final verdict, Lord Northington relied on Chief Justice Holt's decision as precedent by ruling 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 Corpus* if restrained of his liberty. Bill dismissed with costs."<sup>20</sup> Although Northington was not fond of Philip Yorke, and the "Yorke-Talbot Opinion", the *Pearne v. Lisle* determination may be due to political motives, Northington's ability to do so exemplified the indefinite nature of the law on slavery. By relying on the Cartwright Case and the two cases judged by Holt earlier in the century for precedent, Northington successfully challenged the legal authority of Yorke and Talbot.

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<sup>18</sup> *ibid*, 48-50.

<sup>19</sup> *Shanley v. Harvey*, March 15 1762, 2 Eden, 125, pp. 844

<sup>20</sup> *Shanley v. Harvey*. March 15 1762, 2 Eden, 125, pp. 844-845

Although it did not result in a slave case, the dispute between David Lisle and Jonathan Strong was a significant event in this sequence of slave disputes. In 1765, Lisle brought Strong, a slave from Barbados, to England. After viciously beating him over the head with a pistol, causing massive injuries nearly crippling him, Lisle discarded Strong.<sup>21</sup> Strong successfully wrote to William and Granville Sharp, asking the two brothers for help. Upon seeing the improved health of Strong, Lisle employed John Ross and William Miller, officers under the Mayor, to kidnap and sell him to John Kerr for thirty pounds. When Strong was detained in prison, he sent for Granville Sharp. The keepers denied that any such man was being kept there, which roused the suspicions of Sharp. As a result, Sharp went to the Lord Mayor, Sir Robert Kite, requesting that he summon the men who had retained Strong. On September 18, Sharp attended the Mansion-House, meeting with the Lord Mayor and two men who claimed to own Strong, James Kerr, a Jamaican planter, and Mr. David Lair, the captain of the vessel responsible for delivering Strong to Kerr. The Lord-Mayor stated that ““the lad had not stolen any thing, and was not guilty of any offence, and was therefore at liberty to go away.””<sup>22</sup> After the man tried to seize Strong by the arm, Sharp threatened to charge him for assault, and the man promptly left.<sup>23</sup> Strong was discharged from duty because he had been taken without a warrant.

As a result of this case, Granville Sharp was deeply affected and became very passionate about abolition. Hoping to end slavery in the courts, he sought out Justice William Blackstone for his opinion on the state of slavery in England. Blackstone

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<sup>21</sup> Clarkson, 57

<sup>22</sup> Prince Hoare, *Memoirs of Granville Sharp, Esq.* (London: Henry Colbourn, New Burlington Street, 1828), 35.

<sup>23</sup> Hoare, 33-35.

originally denied forming a legal opinion.<sup>24</sup> Few endeavored to challenge the legality of slavery because Yorke's and Talbot's legal expertise and judicial opinions were held in high regard and authority. Consequently, for the next three years Sharp decided to focus on English law, and in 1769 produced *A Representation of the Injustice and dangerous Tendency of Tolerating Slavery in England*, where he challenged the "Yorke-Talbot Opinion", and supported Justice Holt's legal interpretation on slavery. He defended his argument with the idea of villeinage – paid feudal land tenure – and the idea that everyman was free to defend his rights. Moreover, he averred that force against a slave could not be used without legal process.<sup>25</sup> Thus, according to Sharp, it became necessary for the courts to decide if an African was a man.

The work of Granville Sharp was accelerated with the case of *Lewis v. Stapylton*. In 1770 Robert Stapylton employed two men, Maloney and Armstrong<sup>26</sup>, to seize his slave Thomas Lewis, gag him and chain him on a boat in the Thames. Servants of a Mrs. Banks, working in a nearby garden, overheard Lewis screaming, but the boat had left by the time they reached the place where the scream emanated.<sup>27</sup> After informing Mrs. Banks of these circumstances, she promptly sent for Sharp, who had become well-known

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<sup>24</sup> According to F. O. Shyllon in *Black Slaves in Britain*, before Granville Sharp sought his opinion, William Blackstone had written in *Commentaries on the Laws of England* that in regard to natural rights, a slave who came to England instantly became free. In the second and third copies of this work, he altered his opinion by adding "though the master's right to his service may probably still continue" after his original comment that slaves became free. Sharp accused him of altering his opinion. However, Blackstone argued that he included an opinion from a later chapter in his book, and therefore, did not change his views on slavery in England. pp. 59-63; William Blackstone. Letter to Granville Sharp. 20, February, 1769. Granville Sharp Letters to, on slavery 1768-1773. New York Historical Society, New York, New York. In a letter to Sharp, Blackstone explained that the correction was made after he saw that Sharp and others were misunderstanding his belief. Blackstone wrote that "For you will observe, that I have never preemptorily said, that the Master hath acquired any right to 'the perpetual Service of John or Thomas,' or that the Heather Negroe 'did owe such Service to his American Master.' I only say that 'if he did, that obligation is not dissolved by his coming to England and turning Christian."

<sup>25</sup> Clarkson, 14.

<sup>26</sup> Hoare, 54.

<sup>27</sup> Clarkson, 61.

for his position on abolition. In the court case, Stapylton claimed that Lewis was his property, and in that right, he was able to forcibly deport him from England. In this case, the slave, Thomas Lewis, was represented by John Dunning, the same man who would represent the master Stewart in the Somerset Case. During the trial, Dunning held up Sharp's book and pleaded that, "I shall submit what my ideas are upon such evidence, reserving to myself an opportunity of discussing more particularly, and insisting, that no such property can exist – which I will maintain (and here be held up the book to the notice of those present) in any place, and in any Court in this kingdom; reserving to myself a right to insist, that our laws admit of no such property."<sup>28</sup> Dunning won Lewis' freedom, arguing that a man cannot take property in another man in England. However, the final judgment in the court case was centered on the idea that Stapylton could not prove that he in fact owned Lewis. As Sharp wrote in his manuscripts, "Lord Mansfield avoided bringing the question to issue, by discharging the negro on some other pretence... He was, in fact, discharged because the defendant could bring no evidence that Lewis was even nominally his property."<sup>29</sup> By 1770, no case had fully answered whether slavery existed in England, and whether a slave entering England became free.

The conflicting rulings of the slave cases resulted in an unclear status of the law on slavery. The unpredictability of the law scared slave traders and planters, and also made abolitionists anxious for a final categorical decision. Both sides saw no end to trials like the aforementioned cases and knew that a definitive answer on the matter was necessary. Hence, when Granville Sharp heard of the plight of James Somerset and

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<sup>28</sup> Prince Hoare, *Memoirs of Granville Sharp, Esq.* (London: Henry Colbourn, New Burlington Street, 1828), 90. An account is also found in Clarkson's *The History of the Rise, Progress, and Accomplishment of the Abolition of the African Slave-Trade by the British Parliament.*

<sup>29</sup> *Ibid.*, 55.

sought a writ of *habeas corpus*, many in the legal system knew it was time for an official precedent to be established.

The Somerset Case consisted of the leading legal figures of the period. William Murray, Lord Mansfield presided over the case and James Somerset was represented by William Davy, John Glynn, Francis Hargrave, James Mansfield, and John Alleyne. Representing Charles Stewart were John Dunning and James Wallace. Submissions presented by both sides continued to represent the diverging legal maxims, as seen in the decisions by Holt and Yorke, and were both laced with the growing elements of sentimentality, morality, liberty and the language of the rights of man. The arguments of the Somerset Case were captured in both the court reports recorded by Capel Lofft, as well as an article in the *Scots Magazine*.

The term ‘rights of man’ began to appear in the 1760s and increasingly thereafter. Historian Lynn Hunt has argued that social and cultural changes – the increase in newspapers and pamphlets – in the late eighteenth century produced a strong sense of equality. She averred that equality of rights came out of the understanding that other humans were just like you. According to Hunt, this moral autonomous nature of human beings was a product of the growing sense of empathy and the sacredness of the body.<sup>30</sup> Moreover, the belief that human beings possessed natural rights was a theory that dated back to the seventeenth century with the work of Hugo Grotius. Concerns about rights of man and natural rights, and the increasing sentiment of freedom and liberty exposed contradictions as well as the need for broader definitions in an Empire that allowed men

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<sup>30</sup> Lynn Hunt, “The Paradoxical Origins of Human Rights,” in *Human Rights and Revolution* ed. by Jeffrey N. Wasserstrom et al. (Plymouth: Rowman & Littlefield Publishers, 2007), 3-16. This concept of the rights of man will be further explored in chapter 2.

to be kept in bondage. Thus, this chapter suggests that the submissions of the Somerset Case and the resulting judgment by Mansfield attempted to extend this perception of the rights of man – the rights of the freeborn English man – to the black population in England. This is more famously illustrated with Josiah Wedgwood’s 1787 medallion ‘Am I Not a Man and a Brother.’ Clarkson wrote that the medallion “soon, like The Negro’s Complaint, in different parts of the Kingdom... Of the ladies several wore them in bracelets, and others had them fitted up in an ornamental manner as pins for the hair.”<sup>31</sup> Wedgwood’s medallion became fashionable. It was used for “promoting the cause of justice, humanity, and freedom.”<sup>32</sup> Conversely, this notion of extending the rights of man to Blacks conflicted with natural rights, especially John Locke’s “Life, Liberty, and Estate,” which the planters and merchants believed ensured their property in slaves.<sup>33</sup> The Somerset Case presented a dichotomy: Stewart’s side believed they had a right to their property, and Somerset’s counsel claimed that the rights of a freeborn English man should be extended to James Somerset, as well as other slaves in England.

The pleading on behalf of James Somerset began with Serjeant Davy on Friday, February 7, 1772. Davy insisted that colonial laws were inferior to the laws of England, and stated the previous court cases – most adamantly the Cartwright Case – in which it was determined that slavery did not exist.<sup>34</sup> The *Scots Magazine* reported that Davy argued the air of England made a slave free and subject to the laws of the land and cautioned that “making slaves free here, would be a proper check on proprietors of slaves from bringing them over; otherwise, if slaves were to be considered as in slavery here, it

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<sup>31</sup> Clarkson, 296-297.

<sup>32</sup> Clarkson, 297.

<sup>33</sup> Lynn Hunt, “The Paradoxical Origins of Human Rights,” in *Human Rights and Revolutions* ed. by Jeffrey N. Wasserstrom et al. (Plymouth: Rowman & Littlefield Publishers, 2007), 3-16.

<sup>34</sup> Shyllon, 91-92

might not be extraordinary for a planter to bring over numbers, and yoke them in ploughs or carts, instead of horses.”<sup>35</sup> Davy’s argument cautioned that by making slavery legal in England it would encourage more planters to purchase slaves. As most Britons would agree that slavery was repulsive, the encouragement a pro-slavery judgment would present was dangerous. Following Davy, Serjeant Glynn represented Somerset. Glynn argued predominantly against the importation of foreign laws in to England. He contended that slavery was local, and that every other country should act as a haven for slaves.<sup>36</sup> Overall, on the first day of court, Davy and Glynn disregarded arguments based on sentimentality and morality, and opted to represent Somerset by relying on strict legal assertions. Their submission hinged on the premise that English laws should not be influenced by foreign laws, relying on the precedent set in the Cartwright Case, *Smith v. Gould* and *Smith v. Brown and Cooper*. After Glynn, Lord Mansfield deferred the succeeding hearings to the next term.

On Saturday, May 9, 1772, Lord Mansfield re-opened the case and the argumentation started with James Mansfield. Similar to his colleagues, James Mansfield attested against the importation of colonial laws into England. The most influential segment of his submission was the introduction of the concept of the ‘natural rights of men.’ He introduced this main argument for the Somerset counsel by insisting that England’s law would not allow Somerset to be a slave. According to him, Somerset was a man, and would remain one until the court judged otherwise.<sup>37</sup> Thus, James Mansfield presented the idea that the courts must decide if the ‘natural rights of men’ extended to slaves.

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<sup>35</sup> *Scots Magazine* 1772 volume 34 (Edinburgh. Printed by A. Murray and J. Cochran), 297.

<sup>36</sup> *Ibid.*

<sup>37</sup> Shyllon, 94.

After another deferral, on Thursday May 14, 1772, Francis Hargrave and John Alleyne were the last lawyers to speak on behalf of Somerset before Stewart's submission and the closing statements by Davy. Hargrave was seen as the most effective lawyer in the trial. In a letter to his merchant and planter colleagues, Stewart exclaimed that Hargrave 'flourished' on the side of Somerset.<sup>38</sup> The *Scots Magazine* reported that Hargrave proved that "the law of England had constantly discountenanced slavery, even in the established form of villanage, until it was totally abolished; that is constantly guarded against the admission of every new species of slavery, and therefore could never be supposed to warrant this which was now contended for."<sup>39</sup> As evident in Capel Lofft's court reports, Hargrave's submission had four main elements: he sought to define slavery, argue what its existence would do to England, contended that slavery was not compatible with English law, and referred to Holt for precedent. Hargrave defined slavery as "a service for like, for bare necessities... it includes not the power of the master over the slave's person, property, and limbs... not the right over all acquirements of the slave's labour."<sup>40</sup> Using this definition of slavery, Hargrave attested that Stewart did not have the type of ownership over Somerset he believed he did. The bulk of his argument observed the effect that the existence of slavery or servitude would have on England. He cautioned that destructive consequences would accompany slavery – burglary, murder – and infect the superior liberty and freedom of England. According to Daniel J. Hulsebosch in "Nothing But Liberty: Somerset's Case and the British Empire", "The gift of liberty to each person, even a perpetual servant, was a sign of England's virtue. It was nothing but

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<sup>38</sup> James Oldham and William Murray Mansfield. *The Mansfield Manuscripts and the Growth of English Law in the Eighteenth Century* (Raleigh: University of North Carolina, 1992), 1228-1229.

<sup>39</sup> *Scots Magazine*, 297

<sup>40</sup> Capel Lofft, *Reports of Cases Adjudged in the Court of King's Bench (1772-1774)* (Dublin: James Moore, 1790), 2

liberty; but liberty was, they claimed, so much. The loss of even one individual's liberty to remain in England meant that everyone was endangered."<sup>41</sup> The concept of English liberty, primarily an individual's liberty, became the leading argument for the Somerset counsel. The concept of freeborn had been dropped in this rhetoric. As Hulsebosch notes, liberty was a sign of England's virtue, and without liberty, he questioned, what would make England distinct from its inferior colonies and foreign nations?<sup>42</sup>

After introducing the idea of English liberty, Hargrave attempted to prove that slavery was incompatible with the natural rights of mankind and the principles of good government established by philosophers and legal theorists Samuel Rutherford and John Locke.<sup>43</sup> He argued if the Somerset Case asserted the existence of slavery, England would revert back to barbarous times. He furthered this point by stating that "Tis very doubtful whether the laws of England will permit a man to bind himself by contract to serve for life: Certainly will not suffer him to invest another man with despotism, nor prevent his own right to dispose of property."<sup>44</sup> Liberty was a vital element in English law and Hargrave argued it would be impossible for England, "the land of freedom", to create a law which allowed men to sacrifice their own freedom. Finally, Hargrave relied on Holt to contest both the status of a slave and the pluralities of the law. First, he contended that as soon as a slave entered England, he became free. Second, he stated, "In England, where freedom is the grant object of the laws, and dispensed to the meanest individual, shall the laws of an infant colony, Virginia, or of a barbarous nation, Africa,

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<sup>41</sup> Daniel J. Hulsebosch, "Nothing But Liberty: Somerset's Case and the British Empire." *Law and History Review* 24 (2006): 15.

<sup>42</sup> Ibid.

<sup>43</sup> Lofft, 3.

Rutherford's *Lex, Rex* was a polemic challenging Rex Lex – the idea that the King is the Law – where he promoted separation of powers and the covenant. This work was a precursor to John Locke's social contract.

<sup>44</sup> Lofft, 4.

prevail?”<sup>45</sup> By arguing that foreign laws – in this case African and Virginian – should not have jurisdiction over English laws, he continued the line of argumentation developed by Holt. Hargrave’s notion concerning the idea of liberty and freedom was pivotal to the Somerset submission. Liberty and freedom were possibly the only English concepts that could rival property. The English system was superior to foreign nations and the liberty and freedom of its subjects was a determinant factor in that pride. If the court was to declare Somerset a slave, Hargrave questioned what would separate England from the immoral and barbarous nature of foreign nations.

Following Hargrave, John Alleyne closed the submission on behalf of Somerset. He had two main assertions for the court: slavery was not natural and the African slave trade’s foundation in English law was faulty. First, Alleyne insisted that slavery was not natural. He asserted that “tis a municipal relation; an institution therefore confined to certain places, and necessarily dropt by passage in to a country where such municipal regulations do not subsist. The negro making choice of his habitation here, has subjected himself to the penalties, and is therefore entitled to the protection of our laws.”<sup>46</sup> Alleyne contended that slavery was not accepted in England, and only existed where it was enforced by law. Thus, since there were no laws enforcing slavery in England, Somerset should be free. Second, Alleyne disputed the legal nature of the power instilled on the slave trade. The government integrated the African slave trade with such powers as individuals had used by custom, consequently it could not be extended to England.<sup>47</sup> The law developed by custom in foreign nations could not over-rule England, where no custom of slavery existed. As *Scots Magazine* reported Alleyne posited “That all

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<sup>45</sup> Ibid, 4-5.

<sup>46</sup> Ibid, 6.

<sup>47</sup> Ibid, 7.

municipal relation which were repugnant to natural laws, cease to operate the moment the persons affected by them were out of the state in which they were made”.<sup>48</sup> The counsel representing James Somerset constructed a defense based upon three main principles: the laws of an inferior colony could have no holding in English jurisdiction; Lord Holt’s decisions of 1701 and 1705 created the correct precedent that slavery did not exist in England; and that England was too moral, and the concept of liberty too fundamental, for slavery to exist.

The submission for Stewart was presented by James Wallace and John Dunning who sought to establish that slavery existed in England. James Wallace began by stating that slavery should be a right in England because it was found in three quarters of the world, and partly in the fourth.<sup>49</sup> He condemned as illegal the purchase of James Somerset made in the West Indies, where no positive law existed. He then cleverly linked this idea with the fact that similar to the West Indies, there was no positive law in England that stated slavery did not exist. This fact was proven by the idea that villeiny – a peasant legally tied to the land he worked on – existed in the age of Elizabeth I.<sup>50</sup> With this argument Wallace preemptively attacked the idea that positive law was needed to sanction slavery in England. After avowing that slavery was as lawful in England as in the West Indies, Wallace challenged Lord Holt’s opinion. He believed that Holt’s ruling was “a mere dictum, a decision unsupported by precedent.”<sup>51</sup> According to Wallace, the only precedent that had become legally entrenched was the “Yorke-Talbot Opinion.” Wallace ended his submission by stating that even a slave who was baptized remained a

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<sup>48</sup> *Scots Magazine*, 297.

<sup>49</sup> Lofft, 7.

<sup>50</sup> *Ibid*, 8.

<sup>51</sup> *Ibid*, 8.

slave in England. Wallace's two arguments directly contested two of the main tenets presented by Somerset's counsel. He believed that slavery should exist in England because it existed in a majority of the world – ignoring the Hanoverian British assertion of the superior liberty and freedom of English law over foreign nations – and he stated that Lord Holt's decisions were inferior to the "Yorke-Talbot Opinion."

The *Scots Magazine* wrote that Lord Mansfield responded to Wallace on two main points. First, Lord Mansfield believed that Wallace's argument against the need for a contract between a master and a slave was wrong, and went against the existence of the case. The magazine reported that Lord Mansfield believed that assertion to be "utterly repugnant and destructive of every idea of a contract between the parties."<sup>52</sup> Secondly, Lord Mansfield questioned Wallace's point concerning the lack of a law sanctioning slavery in the West Indies and asked whether the plantation laws relative to slaves should bind them in Great Britain and Ireland, or if they should work to distinguish, and establish when they should operate. Lord Mansfield concluded by stating that though he "had the power to *declare the law*, he had none *to make or create one* of the present occasion."<sup>53</sup> At this point in the trial the two clear and contentious legal questions were: first, whether foreign laws should have weight in English jurisdiction, and secondly, whether Holt's earlier rulings or the "Yorke-Talbot Opinion" was the correct precedent in slave law.

After another recess, Stewart's leading counsel John Dunning presented his case on Thursday, May 21, 1772. According to James Oldham in *The Mansfield Manuscripts*, Dunning delivered an uninspired address. In a letter written to merchants of the slave

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<sup>52</sup> *Scots Magazine*, 298.

<sup>53</sup> *Ibid.*

trade, Stewart exclaimed, “am told that some young counsel flourished away on the side of liberty, and acquired great honour. Dunning was dull and languid, and would have made a much better figure on that side also.”<sup>54</sup> Dunning began his submission by stating that slavery was not in his personal beliefs, but he did consider that lawfully it should exist. He maintained that he was not concerned with the condition of James Somerset, unless Captain Knowles or Charles Stewart had attempted to kill or eat him. A principle element in Dunning’s argumentation was his acknowledgement that freedom was an important liberty in England. He argued, however, that Somerset was from Africa where the custom was to enslave those imprisoned from war. African law disposed him as property, British legislature confirmed this condition, and thus he was a slave both in law and fact.<sup>55</sup> Ironically, this argument contradicted Wallace’s likening of England to the West Indies, where neither had specific laws enforcing slavery. Dunning then contended that a contract was not needed between a master and a slave. Although there may not be an official contract between Somerset and Stewart, their relationship was comparable to a husband and his wife, or a parish apprenticeship.<sup>56</sup> A husband owned his wife without an official contract, so seemingly a master could also own his slave. This relation was also similar to an apprenticeship in the parish. The man being apprenticed did not have a choice where he worked, and no formal contract was signed.<sup>57</sup> Dunning finished his argument by stating, “I hope, therefore, I shall not suffer in the opinion of those whose

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<sup>54</sup> Oldham, 1228-1229.

<sup>55</sup> Lofft, 11.

<sup>56</sup> According to Douglas Hay in Douglas Hay and Paul Craven, “England, 1562-1875,” in *Masters, Servants, and Magistrates in Britain and the Empire, 1562-1955* (Chapel Hill: University of North Carolina Press, 2004), this was general principle in law. “By the eighteenth century a contract, oral, or written, for workers other than day labourers was presumed (following the statute) to last a year, particularly in husbandry, unless specific terms had been explicitly negotiated, or the periods or terms of payment or other details altered the case.” 66. Moreover, the practice of the period in London was to put runaways in Bridewell, London’s principal house of correction. 92.

<sup>57</sup> Lofft, 14.

honest passions are fired at the name of slavery. I hope I have not transgressed my duty to humanity; nor doubt I you lordship discharged of yours to justice.”<sup>58</sup> In combination with the fact that he insisted a slave’s change of location only exempted him from ‘cruel usage’ he would receive in other locations,<sup>59</sup> this quotation made his submission fixed with trepidation of the legal consequences. It is significant to note that Dunning openly stated that he hoped his representation of Stewart did not undermine his duty to humanity and insisted that Somerset, as a slave, should be sent back to the land that would treat him cruelly. The submission by Dunning, even more than the arguments for Somerset, illustrated the increasing demand for morality in England.<sup>60</sup> He mentioned the importance of liberty in England, the cruelty in the slave trade, and alluded to his belief that his representing Stewart may contradict his obligation to humanity. Dunning’s somewhat apprehensive submission for Stewart demonstrated the precarious state of slavery in England, as it conflicted with the growing belief in the rights of man and the question of whether these rights should be extended to the black population.

Following Dunning’s speech, Davy’s reply closed the presentation of counsel. He finished the case by retracing the key arguments presented in Somerset’s submission to the Court. First, foreign law sanctioning slavery could not be imported to England. He supported this claim by asserting that if an English person died overseas he would be taken care of in the custom of that country and not that of England. Second, he refuted Stewart’s counsel’s argument for villeiny, labelling it faulty, as he had never heard of a

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<sup>58</sup> Ibid, 15.

<sup>59</sup> Shyllon, 105.

<sup>60</sup> For more information, see: Keith Thomas, *Man and the natural world: changing attitudes in England 1500-1800* (London : Allen Lane, 1983).

man held in villeinage who denied himself to be one.<sup>61</sup> Finally, he attested that Somerset was not guilty of any crimes and that for England to make him a slave would supplant his personal liberty. He finished by restating the decision of the Cartwright Case: “However, it has been asserted, and is not repeated by me, this air is too pure for a slave to breathe in: I trust, I shall not quit this court without certain conviction of the truth of that assertion.”<sup>62</sup> Davy finished the submission for Somerset by restating the central element of their argument; that England was too moral a nation to allow slavery within its borders.

Lord Mansfield gave the final verdict in the Somerset Case on Tuesday, June 23, 1772. Before he made his ruling he first acknowledged the different laws that existed in different British jurisdictions, and the importance of their intersection, especially for the economic interests of England and its colonies. While the *Scots Magazine* account and Capel Lofft’s reports of the Somerset Case both offer accurate accounts of the arguments presented on both sides of the case, their reports on the final judgment have distinct variations. Both accounts, as well as a report in the *Annual Register* for 1772 and a copy of the decision in Granville Sharp’s manuscripts, illustrate the same final judgment, but have different obiter dictum accompanying the final verdict. William Wiecek argues that Capel Lofft’s reports used language that aided Lofft’s libertarian views,<sup>63</sup> an idea furthered by Jerome Nadelhaft, as well as Folarin O. Shyllon, who argued that there are some vital omissions in Lofft’s published reports.<sup>64</sup> An in-depth analysis of these four

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<sup>61</sup> Lofft, 16.

<sup>62</sup> Ibid, 17.

<sup>63</sup> William M. Wiecek, *The Sources of Anti-Slavery Constitutionalism in American, 1760-1848* (London: Cornell University Press, 1977), 141-146.

<sup>64</sup> Shyllon, 110.

For more information see: Jerome Nadelhaft, “The Somerset Case and Slavery: Myth, Reality, and Repercussions,” *The Journal of Negro History* 51, No. 3 (1966): pp. 193-208.

accounts, will aid in a better understanding of the Somerset Case and its final judgment.

In his final ruling, Lofft reported that Mansfield stated:

The state of slavery is of such a nature, that is it incapable of being introduced on any reasons, moral, or political; but only positive law, which preserves its force long after the reasons, occasion, and time itself from whence it was created, is erased from memory: It's so odious, that nothing can be suffered to support it, but positive law. Whatever inconveniences, therefore, may follow from a decision, I cannot say this case is allowed or approved by the law of England; and therefore the black must be discharged.<sup>65</sup>

Lord Mansfield established three main points in this decision: he acknowledged that slavery was 'odious'; secondly and debatably, he extended the right of the freeborn English man to Blacks in England; and he stated that slavery could only be introduced by positive law.

By commenting that slavery was 'odious,' Mansfield illustrated how he and most of the legal officials in the court room felt about the trade. His ruling extended to Blacks the ability to use the law, and ensured that the liberty of English men and women was an inalienable right for all its people. According to Van Cleve, Mansfield transformed the idea of freedom in English law; "core legal freedoms such as access to the courts and protection from arbitrary, unlimited physical abuse, were available to all subjects as 'rights of man,' not dependent upon birth, race, religion, or free status, and could only be denied by statute or express, longstanding custom."<sup>66</sup> With this ruling, Mansfield outlined the immoral nature of the human trade, and ensured that the law was open to every English man, regardless of colour.

The second account of Mansfield's judgment exists in *Scots Magazine*. The report

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<sup>65</sup> Lofft, 20.

<sup>66</sup> Van Cleve, 14.

read that Mansfield held:

The state of slavery is of such a nature, that it is incapable of being now introduced by courts of justice upon mere reasoning or inferences from any principles, natural or political; it *must* take its rife from *positive* law; the origin of it can in no country or age be traced back to any other source: immemorial usage preserves the memory of positive law long after all traces of the occasion, reason, authority, and time of its introduction, are lost; and, in a case so odious as the condition of slaves, must be taken strictly: the power claimed by the return was never in use here; no master ever was allowed here to take a slave by force to be sold abroad, because he had deserted from his service, or for any other reason whatever; we cannot say the cause set forth by this return is allowed or approved of by the laws of this kingdom, therefore the man must be discharged.<sup>67</sup>

In *The Problem of Slavery in the Age of Revolution 1770-1823*, the noted historian David Brion Davis argues that the *Scots Magazine* account is the most accurate. Davis stated that if the *Scots Magazine* report was the more accurate then “Mansfield was not saying, as commonly interpreted, that slavery is so odious that it can only be supported by statutory law. He was simply maintaining that the character of slavery is such that the law must be ‘taken strictly.’”<sup>68</sup> The *Scots Magazine* account of Mansfield’s decision placed less emphasis on the morality of slavery, and more on the legality of slavery. The first example of this is the comparison of Lofft’s “The state of slavery is of such a nature, that is it incapable of being introduced on any reasons, moral, or political; but only positive law” with the *Scots Magazine*’s version which notes that: “The state of slavery is of such a nature, that it is incapable of being now introduced by courts of justice upon mere reasoning or inferences from any principles, natural or political; it *must* take its rife from *positive* law”. Lofft’s use of ‘moral’ has a different effect than the use of ‘natural,’ as it implies that slavery is morally incorrect, while ‘natural’ merely explains that slavery is

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<sup>67</sup> *Scots Magazine* 1772 volume 34. Edinburgh. Printed by A. Murray and J. Cochran 297

<sup>68</sup> David Brion Davis, *The Problem of Slavery in the Age of Revolution 1770-1823* (London: Cornell University Press, 1975), 477n.

man-made and no law can exist in nature concerning the existence of slavery. Lofft's "It's so odious, that nothing can be suffered to support it, but positive law" has distinct differences from "in a case so odious as the condition of slaves, must be taken strictly". The latter version refers more to the existence of slavery as a legal issue, as opposed to Lofft's version which refers to slavery in a more moral context. Through these two examples, it is evident that Lofft's version of Mansfield's decision contained more hints of abolitionist sentiment.

The third account of Mansfield's decision in the Somerset Case comes from the *Annual Register*. The register wrote that Mansfield stated:

The *only* question before us is, Is the cause returned sufficient for remanding the slave? If not, he must be discharged. The cause returned is, the slave absented himself, and departed, from his master's service, and refused to return and serve him during his stay in England; where upon, by his master's orders, he was put on board the ship by force, and there detained in secure custody, to be carried out of the kingdom, and sold. So high an act of dominion was never in use here; no master ever was allowed here to take a slave by force to be sold abroad, because he had deserted from his service, or for any other reason whatever. We cannot say the cause set forth by this return is allowed or approved of by the laws of this kingdom, therefore the man must be discharged.<sup>69</sup>

This third account omits any observation concerning positive law – which Davis argued has led many historians, including Nadelhaft, to posit that Lofft put words from Hargrave's submission into Mansfield's judgment.<sup>70</sup> This view would be valid, as abolitionists would be interested in seeing the case deliberated in Parliament where positive law could be created – prohibiting the existence of slavery. Instead this account refers more to 'time immemorial', as it denies that bringing slaves into England was

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<sup>69</sup> Edmund Burke, *The Annual Register or a view of the History, Politics, and Literature, for the year 1772* (London: Printed for J. Dodsley, in Pall-Mall, 1773), 110.

<sup>70</sup> Davis, 476n.

common practice, and thus James Somerset must be discharged. This account, unlike the others, has no mention of the word ‘odious;’ a word that stood out at the time as the other two accounts and shine in the minds of historians. This version implies strict legal reasoning, void of moral sentiments. While Capel Lofft is thought to have infused Mansfield’s judgment with abolitionist sentiment, the *Annual Register* has much more distinguishable variations from the *Scots Magazine* account and Capel Lofft’s reports. While the other two contain similar accounts with minor word changes, the *Annual Register* version of Mansfield’s holding is noticeably different.

The fourth and final account is from Granville Sharp’s manuscripts. While it has been perceived that the account by Capel Lofft could have been infused with his own abolitionary goals, it could also be said about Sharp. Sharp recorded Mansfield decision as followed:

but no foreigner can in England claim a right over a Man: such a Claim is not known to the Laws of England. Immemorial Usage preserves positive Law after the occasion of accident which gave rise to it had been forgotten. And, tracing the subject to natural principles the claim of Slavery never can be supported. The power claimed never was in use here or acknowledged by the Law. Upon whole we cannot say the Cause returned is sufficient by the Law, and therefore the Man must be discharged.

Similar to the *Scots Magazine* version, Sharp’s also refers to immemorial usage.

However, Sharp’s account has more of an abolitionist twist to it. In the *Annual Register* and the *Scots Magazine* version, they report that no man had ever been allowed to take a slave by force to be sold abroad. In Sharp’s version he states that slavery was never allowed through natural principles or by the Laws of England. Capel Lofft’s version does state that “The state of slavery is of such a nature, that is it incapable of being introduced on any reasons, moral, or political; but only positive law, which preserves its force long

after the reasons, occasion, and time itself from whence it was created, is erased from memory.”<sup>71</sup> However, this sentiment is presented in every other account except the *Annual Register*. While Granville Sharp’s account of Mansfield’s decision appears to be more framed towards the abolitionist goals, the *Annual Register* is completely void of moral sentiment, relying strictly on legal reasoning. Just as Lofft and Sharp could be accused of injecting their liberal abolitionary views into their accounts, so could Edmund Burke who was the editor of the *Annual Register*. Although vocal about the immorality of the slave trade, Burke believed that the abolition of slavery would be detrimental to the British Empire, and was instead known to promote the better treatment of slaves.<sup>72</sup> All four accounts are framed differently, and place varying degrees of emphasis on the legality and morality of slavery.

In looking at all four accounts of the Somerset Case, it becomes evident that the final decision of the case was conceived to be a groundbreaking decision before it was made. All four accounts, although containing different dictum, reported that Somerset was discharged because there was no law – whether through common practice or positive law – that made slavery legal. This ruling was what abolitionists needed to make this case revolutionary. According to Lofft’s published reports and the *Scots Magazine* account – two well-circulated reports of the case<sup>73</sup> – Mansfield held that Somerset must be discharged because there was no positive law ensuring that slavery existed. The corroboration of these two popular accounts, and the fact that Mansfield never denied their validity, makes this popular understanding of his ruling more important than what

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<sup>71</sup> Lofft, 20.

<sup>72</sup> F. P. Lock, *Edmund Burke: 1748-1797* (New York: Oxford University Press, 2006), 413.

<sup>73</sup> It is unknown the extent to which Sharp’s account of Mansfield decision was circulated.

he actually stated. This holding illustrated both the growing moral tension with the slave trade in England and ensured that the future abolitionist arguments would be reserved for Parliamentary debate, where positive law could be created. After a century of conflicting case law and the growth in anti-slavery morale, it was perceived that Mansfield attempted to eradicate this problem by pushing the slavery question from the court room into Parliament. If Mansfield had endeavored to create a strong precedent against slavery like judges before him – Holt and Northington – it was quite possible that the Somerset Case would have made no advance in slave law. Moreover, considering the vast economic and commercial impact it would have on the colonies of Britain – predominantly the West Indian sugar island colonies – it was a decision Mansfield would not attempt. He understood that a decision of that magnitude, which would affect the entire Empire and its unity,<sup>74</sup> was best left for Parliament. Yet, by stating that slavery was so odious that no law could support it, and by saying that it could only be rectified by positive law, he ensured that abolitionists would have legal rhetoric to work with, as well as a precise location for the decision of abolition to take place.

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<sup>74</sup> In Alfred W. Blumrosen and Ruth G. Blumrosen, *Slave Nation: How Slavery United the Colonies and Sparked the American Revolution* (Illinois: Source Books Inc, 2005), the two lawyers explored the effect of the Somerset Case on the American colonies. They believed that although the Somerset decision did not overthrow slavery throughout the Empire, its existence and Mansfield's ambiguous verdict threatened slavery in the South and ultimately led to the American Revolution.

On this subject also see Gary B. Nash, *The Unknown American Revolution: The Unruly Birth of Democracy and the Struggle to Create America* (New York: Viking Adult, 2005), 114-127, especially 120-125. Nash argues that colonists were split over the issue of abolition on the eve of the American Revolution.

## CHAPTER 2

### THE PAPER WARS: POPULAR POLITICS AND THE QUESTION OF ABOLITION IN LATE-EIGHTEENTH CENTURY ENGLAND

The Somerset Case of 1772 took place in Britain when the social order and political society were in the wake of 1688, in a state of flux, somewhere between parliamentary supremacy to parliamentary sovereignty – making the House of Lords and House of Commons supreme over the Crown and potentially sovereign over the people, the constitution, and the law.<sup>1</sup> As John Brewer notes in *Party Ideology and Popular Politics at the Accession of George III*, “in these years were planted the seeds of political sensibility that was to flower in the 1780s and 1790s, manifesting itself in strains of thought that were both anti-aristocratic and reformist.”<sup>2</sup> As a result, the Somerset Case became a landmark trial, accelerating the abolition movement in England. Its lasting significance was partly due to the earlier political movements and achievements of John Wilkes, a radical politician and journalist. His use of pamphlets and newspapers in the 1760s and 1770s to promote liberty and freedom of speech, allowed other propertied middling sort Britons and their American colonial cousins to enter the political sphere and voice their opinions. His political activity and more importantly those of his supporters – most notably the radical extra-parliamentary group,

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<sup>1</sup> Jeffrey Goldworthy, *The Sovereignty of Parliament*, (Oxford: Oxford University Press, 1999) Following the Revolution of 1688, the Bill of Rights (1689) restricted many royal prerogatives – Parliament gained control over the royal succession, as well as the power to dispense statutes – which ultimately strengthened the power of parliament, laying the ground work for sovereignty: 159-60. Legal theorists – William Blackstone, Edmund Burke, William Paley, Jean-Louis De Lolme – supported parliamentary sovereignty believing it was a well-balanced combination between the King, the Lords and the Commons. The Commons ensured the rights of the people, protecting them from tyranny, while the Lords and King guaranteed that democracy was maintained: 200.

<sup>2</sup> John Brewer, *Party Ideology and Popular Politics at the Accession of George III*, (Cambridge: Cambridge University Press, 1981), 179-180.

the Society of the Supporters of the Bill of Rights (SSBR)<sup>3</sup> – combined with the increased amount of written material available to the middling sort and a revolution in the rights of man based on human feelings and emotions, resulted in the Somerset Case becoming the definitive decision; a harbinger that abolition was to come in England. Historians have typically focused on the attacks on slavery, and not on the defense of slavery by those who championed the slave trade. An in-depth analysis of both views is critical to understanding the broader implications of the Somerset Case in later eighteenth-century legal and imperial contexts.

The political maneuverings and achievements of the Wilkesites had much further reaching implications than the immediate gains they sought. Their early advocacy for free press and uncorrupt legislature were necessary arguments and political ideas that led to the reform act of 1832.<sup>4</sup> Moreover, the ideas the SSBR infused into English society gave the middling sort a political and social voice, as they were the embodiment of the power of the pen – they used propaganda and the medium to push their agenda. As the author of the *North Briton* issue number 45 – an issue published on April 23, 1763 which criticized King George III’s praise for the Treaty of Paris – Wilkes was imprisoned and charged with libel. Wilkes won his freedom after challenging his warrant and seizure, and thereafter and rightly or wrongly, his name became

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<sup>3</sup> John Brewer and John Styles, *An Ungovernable People: The English and their law in the seventeenth and eighteenth centuries*, (New Brunswick, NJ: Rutgers University Press, 1980), 128-132. The SSBR consisted of professional men, mostly attorneys or advocates – including John Glynn, Somerset’s attorney in the Somerset Case – who would use the law as a political weapon. The lawyers took the lead in the Wilkesite movement; they “exploited the loopholes in the law, generated drama in the courtroom, and proclaimed their legal and political tenets from the public platform of the assize and the central courts of King’s Bench and Common Pleas.”

<sup>4</sup> The act took seats away from rotten boroughs and gave them to large cities that had sprung up during the Industrial Revolution and increased the number of individuals qualified to vote.

synonymous with liberty and freedom of speech. Ultimately, this event reduced the power the government could employ against political journalists – reinforcing the idea of freedom of the press. Wilkes continued to challenge the system when members of parliament attempted to deny him his Middlesex electoral victory in 1768 and refused to allow him to take a seat in Parliament.<sup>5</sup> Arguing that certain members of parliament had discretionary power, he shook the foundation of the legal and political system, illustrating its seemingly arbitrary nature.

Wilkes and his followers also ensured that although journalists were still excluded from parliamentary debates, they could not be prosecuted for their publication.<sup>6</sup> This effort underlined the importance of open political discussion, and the fundamental position of the middling sort within the realm and discourse of politics and society. Since many of the SSBR were lawyers, they had far-reaching appeal and influence, aided by the reputation of the English law. As Penelope J. Corfield argued in *Power and the Profession in Britain 1700-1850*, “Legal knowledge has wide-reaching scope and principles.”<sup>7</sup> Arguing from legal principles helped the SSBR become more popular, as they used their knowledge to considerable effect. The Wilkesites ensured that the middling sort had a powerful position in politics and society. They emphasized that the denial of his Middlesex seat displayed the unjust nature of the political and legal

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<sup>5</sup> Brewer, *Party Ideology and Popular Politics at the Accession of George III*, 164.

<sup>6</sup> The publication of reports on debates had long been prohibited by Parliament. By 1771, however, over a dozen papers frequently reported on debates, drawing the attention of government supporters. The resulting dispute was known as the “Printer’s Case.” Parliament moved for the proper resolutions from February 1728 to be read, and the Wilkesites argued that it was an attack on privileges; the people had a right to know what their representatives were saying. After repeated attempts by Parliament to eliminate the reporting in newspapers, they were no match for the Wilkesite approach. Following the dispute, reports on parliamentary debates were printed in London newspapers and copied into provincial papers. For more information see: P.D.G. Thomas, “John Wilkes and the Freedom of the Press, 1771,” *Bulletin of the Institute of Historical Research* 33 (1960): 86-98.

<sup>7</sup> Penelope J. Corfield, *Power and the Profession in Britain 1700-1850*, (London: Routledge, 1995), 70.

system – there was an inherent clash between those working towards liberty and those ensuring a state of arbitrary power. The belief that every individual was equal before the law was an ideal that allowed the basic structure of power to exist. Wilkes took advantage of this idea to further his own self reputation – to gain his release from prison and to claim a seat as Member of Parliament for Middlesex. On increasing his popularity and notoriety he was successful, on the latter goal he failed since Parliament had the prerogative to decide who sat in their Chamber as an MP. As Brewer suggests, “The growing interest in politics on the part of the local press was accelerated by Wilkes.”<sup>8</sup>

There was a high level of political interest concerning debate on law and reform following Wilkes’ scandals, especially in the years 1768 to 1770.<sup>9</sup> Wilkes and his popularization of politics gained support because those who took part (brewers, newspaper publishers)<sup>10</sup> saw potential profits in politics and in the Wilkesite movement and their actions gave them political importance, increasing the social status of artisans, craftsmen and other middling professions.<sup>11</sup> Overall, Wilkes and the SSBR radicals gave a political and social voice to propertied members of the middling and lower sorts.<sup>12</sup> Together, they accelerated the growth of the public discourse on the rights of individuals

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<sup>8</sup> Brewer, *Party Ideology and Popular Politics at the Accession of George III*, 176.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid, 199.

<sup>11</sup> As Corfield stated in *Power and the Professions in Britain 1700-1850*, between 1700 and 1850, the number of professional interest groups increased in England. “In eighteenth-century Britain, the professions grew in numbers and, more importantly, in organization and prestige. Concurrently, the existing power structure began to respond to the emergence of new authority figures whose power and prestige were derived not from birth or title – nor from their money (which was precarious) – but primarily from their occupation.” 24.

<sup>12</sup> Political opinions were restricted to those who owned land, and thus had a stake in the country. Law and government were based in property, and rights and liberties were intertwined with individual proprietorship. It was the propertied middling sort who stood to gain from the Wilkesite movement. For more information on propertied Englishman and the law, see: Paul Langford, *Public Life and the Propertied Englishman 1689-1798*, (Oxford: Clarendon Press, 1991).

that was emerging in the late-eighteenth century, as well as the acceptance of political dissent, the growth of rights of man (and later women), as well as the burgeoning status of the middling sort. These changes had implications to the social and political hierarchy. Wilkerite efforts ensured that political questions could be discussed and debated by members of society who did not hold an official position in government nor substantial quantities of property. The SSBR successfully cleared the way for political campaigns – like the abolition of slavery – to take place and become more popular through newspapers and pamphlets. With these emerging forms of mass-produced print and popular literature in public, readers were able to share opinions, and learn of other peoples' first-hand accounts of political and social issues. As a result, they could empathize with the life experiences of other people, including those affected by the brutality of the slave trade.

In this social and political landscape, with issues of legal, economical and social reform at the fore, the Somerset Case proceeded and became, as some of its participants expected, a landmark legal trial. As Lynn Hunt proposed in her recent work, *Inventing Human Rights*, a belief in rights of man depended both on emotion and on reason. The conception of human rights, although recognized by some as a mid-twentieth-century advance, has origins in the late-eighteenth century in the midst of the Enlightenment as Europeans developed a discourse of universal equality inherent in human beings. The rights of man were thought to have been violated if one interpreted an action to be no longer morally acceptable.<sup>13</sup> Hunt believed that reading personal accounts of torture or epistolary novels emotionally affected the reader and resulted in the development of new political and social concepts in the eighteenth century. The growth of these new types of

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<sup>13</sup> Lynn Hunt, *Inventing Human Rights*, (New York: W.W. Norton & Company, Inc, 2007), 26.

literature affected concepts of humanity as readers began to identify with personal accounts from other human beings.<sup>14</sup> She supported this thesis by focusing on the campaigns from the 1760s onwards against the use of state-sanctioned torture. These campaigns resulted in the prohibition of torture in Sweden in 1772, Austria and Bohemia in 1776, and in Britain's discontinuation of public hangings at Tyburn in 1783.<sup>15</sup>

The abolition of state-sanctioned torture emphasized the growing concern for the human body, a new belief campaigners referred to as Enlightenment Humanitarianism.<sup>16</sup> Hunt's study draws many parallels with the abolition of slavery movement which was without coincidence simultaneously gaining momentum. In a noted article "A Powerful Sympathy: Terror, the Prison, and Humanitarian Reform in Early Nineteenth-Century Britain", Randall McGowan explained that sympathy offered a new way of knowing someone, "The sentiment provided a program for transforming threatening encounters with other people into the reassuring discovery of a common humanity."<sup>17</sup> Vic Gatrell continued this line of argumentation in his celebrated yet controversial work, "The Hanging Tree: Execution and the English People 1770-1868", by referring to this phenomenon as the 'humane principle.' Arguing that human feelings prevail when costs of security and comfort are tolerable, he defined the humane people as those who "eat,

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<sup>14</sup> Ibid, 33-34.

<sup>15</sup> Ibid, 76.

<sup>16</sup> Ibid, 80. Literature on the public reactions to executions has been growing significantly in recent years. See V.A.C. Gatrell, *The Hanging Tree: Execution and the English People 1770-1868*, (Oxford: Oxford University Press, 1996); Randall McGowan, "A Powerful Sympathy: Terror, the Prison, and Humanitarian Reform in Early Nineteenth-Century Britain," *Journal of British Studies* 25 (1986); McGowan, "Body and Punishment in Eighteenth-Century England," *Journal of Modern History* 59 (1987): 651-679; McGowan, "Revisiting the Hanging Tree," *British Journal of Criminology* 40, no. 1 (2000): 1-3.

<sup>17</sup> McGowan, 314.

prosper and are safe. (They include the writer and most of his readers no doubt.)”<sup>18</sup> As humanitarians lashed out against state-sanctioned torture because of the sacredness of the body, an increasing number of pamphlets and first-hand accounts of slave trade brutality had the same affect on the public. One would believe that the new found empathy for the sacredness of the human body would play in to the idea that the criminal code used deterrence to frighten individuals away from crime and challenging the order – a concept articulated by Douglas Hay and E.P. Thompson.<sup>19</sup> However, the growth in written material and the growing political voice of the middling sort ensured that these campaigns would be powerful, if their voices were not recognized the people could protest and demand change, occasionally violently, causing a social dislocation in the hierarchy which kept the elite in their powerful positions. By the 1770s, the middling sorts understood the power of the pen in evoking human emotion and that every individual, if equal before the law, could have a political and social voice.

This chapter suggests that this concern for the human body, influenced by the growth in literature, also aided the abolition movement as newspaper accounts and the proliferation of pamphlets describing the plight of African slaves spread throughout Britain. Moreover, as readers of these accounts began to empathize with slaves, the middling sorts, seized upon what John Brewer has coined ‘alternative structures of politics,’ protests, pamphlets, and the press, all of which gave them a powerful voice,

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<sup>18</sup> Gatrell, 12.

<sup>19</sup> Achieving deterrence but not disturbing the sentiment of the crowd was a difficult task for Tyburn officials. In the article “Recasting the Theatre of Execution”, historian Simon Devereaux argued that it became more important in the second half of the eighteenth century that the convict was a passive body, through which public justice could achieve its deterrent motive. He argued that the use of liquor to calm the convicted and hoods to conceal the facial expressions associated with strangulation were introduced to lull the emotions of the audience. “The intention was surely to allow nothing, ideally, to distract the public mind from the main purpose (for officials) of the ritual – to focus upon the crime of the condemned and its punishment, rather than the individual identity and bodily sufferings of the criminal.” See: Simon Devereaux, “Recasting the Theatre of Execution,” *Past and Present*, no 202 (February, 2009): 157.

and a public arena to debate the merits of abolition with those who championed the slave trade.

During the Somerset Case, many newspapers in England, as well as in the American colonies, including the *Gazetteer* and *New Daily Advertiser*, followed the trial. These papers printed “An argument in the case of James Somersett, a Negro, lately determined in 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, by Mr. Hargrave, one of the Counsel for the Negro.”<sup>20</sup> This official statement was reprinted in several newspapers, illustrating the fact that the Somerset Case was widely publicized throughout the English Atlantic world.

Following Mansfield’s decision in the case, several newspapers made the result public. On June 25, 1772, the *General Evening Post* alluded to the belief that Mansfield decision would affectively extinguish slavery in England as well as in the colonies. They reported:

The late decision with regard to Somerset the Negro, a correspondent assures us, will occasion a greater ferment in America (particularly in the Islands) than the Stamp Act itself; for the slaves constituting the great value of (West India) property (especially) and appeals lying from America in all cases of a civil process to the mother-country, every pettifogger will have his neighbor entirely at his mercy, and, by applying to the King’s Bench at Westminster, leave the subject at Jamaica or Barbadoes wholly without a hand to cultivate his plantations.<sup>21</sup>

Although the *General Evening Post* did not explicitly say that Lord Mansfield’s decision

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<sup>20</sup> *Gazetteer and New Daily Advertiser* (London, England), Wednesday, November 11, 1772; Issue 13634

<sup>21</sup> *General Evening Post* (London, England), Thursday, June 25, 1772; Issue 6039

ended slavery in England, it had the same affect. The report warned its readers of the fury that could occur because of Mansfield's decision, stating that every slave could become free by applying to the Court of King's Bench for redress. Thus, they insinuated that slavery was unlawful. The report concluded with the correspondent's observation that the decision was remarkable for "in the slave case, making that no property in England, which is universally allowed to be property in America."<sup>22</sup> The report also illustrates the observation that there was an emerging and important divergence in concepts of property in England and in America. Most significantly, it suggested that a concept as fundamental as property in England could be tampered with and altered by a single determination of the Court of King's Bench. While the Somerset Case was followed by newspapers throughout England, it was also covered by newspapers published in the American colonies. An example of this was the *Virginia Gazette*, which gave updates to its readers on the court case and reported the final decision. On August 27, 1772, the newspaper shared an extract from letter written earlier in the year on June 2, which reported that,

Yesterday Morning came in at ten o'Clock, in the Court of King's Bench, the Judgment of the Negro Cause, when Lord Mansfield spoke for the rest of the Judges. He said that every Slave brought into this Country ought to be free, and that no Master had a Right to sell them here. He quoted several precedents of Lord Raymond and Lord Hardwicke, when this Question had been determined before; but he declared that the Owner might bring an Action of Trover against any One who shall take the Black into Service.<sup>23</sup>

The publication of this letter in the *Virginia Gazette* illustrated how the members of the Empire, outside of England, also followed the case. Moreover, it also shows that Mansfield's decision remained an important point of interest for colonists, as two

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<sup>22</sup> *General Evening Post* (London, England), Thursday, June 25, 1772; Issue 6039.

<sup>23</sup> *Virginia Gazette*, (Williamsburg, Virginia), August 27, 1772; Issue 1100.

months later, the newspapers was still printing accounts of the event.

Following Mansfield's decision in the Somerset Case, many pamphlets were published from both sides of the spectrum in the debate on slavery. The circulation of pamphlets opened up political discussion on the topic. Francis Hargrave, who was seen as the most effective lawyer in the trial, promoted this dialogue by publishing his submission from Thursday May 14, 1772 of the Somerset trial, titled *An Argument in the Case of James Somerset*.<sup>24</sup> By doing this, he ensured that the public were informed of, and understood, the leading moral arguments in the trial that informed Lord Mansfield's final decision – the destructive consequences of allowing slavery, the importance of liberty and the natural rights of mankind and the principles of good government, as well as the line of argumentation developed by Lord Chief Justice John Holt.<sup>25</sup> With this action, Hargrave both illustrated and endorsed the importance of the Somerset Case to the abolition movement.

Accompanying Hargrave's publication and inspired by the Somerset Case was a swarm of pamphlets written by many abolitionists. The result that slaves could not be forcibly removed from England was so ambiguous that it could be widely interpreted. In recognition of this fact, many abolitionists distorted the verdict, declaring that Lord Mansfield had extinguished slavery in the nation. A fine example of this representation can be found in the leading abolitionist Thomas Clarkson's *The History of the Rise, Progress, and Accomplishment of the Abolition of the African Slave-Trade by the British Parliament* (1786) where it is suggested that, "The great and glorious result of the trial

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<sup>24</sup> Francis Hargrave, *An Argument in the Case of James Somerset*. Boston: J. Russell, 1774.

<sup>25</sup> On Lord Chief Justice John Holt, see Oxford Dictionary of National Biography, Paul D. Halliday, "Holt, Sir John," Oxford University Press 2004-9.

was, that as soon as ever any slave set his foot upon English territory, he became free.”<sup>26</sup>

In this case, abolition writers attempted to falsify the verdict, hoping that the public, as well as slaves throughout the empire, would believe that slavery had been abolished. Those who were proslavery were also affected by the distortion of Mansfield’s judgment in the Somerset Case. An example of this is Samuel Estwick, a West Indian agent, serving as assistant agent for the Barbados, who wrote that Mansfield abolished slavery in England.<sup>27</sup> These distorted interpretations of Mansfield’s holding had catastrophic effects on the entire empire. James Somerset and other Blacks present in the court room informed family and friends that Mansfield’s decision extinguished slavery in England, and the idea spread throughout England and crossed the Atlantic into the American colonies. According to Professors of Law Alfred W. Blumrosen and Ruth G. Blumrosen, in their analysis *Slave Nation: How Slavery United the Colonies and Sparked the American Revolution*, although the Somerset decision did not overthrow slavery throughout the Empire, its existence and Mansfield’s ambiguous verdict threatened slavery in the South and was one of the factors that led to the American Revolution. While their thesis is presumptive<sup>28</sup>, the immediate effect on the American colonies was observable as upon hearing of Mansfield’s ruling, slaves began to flee towards British ships, believing they would become free in England.<sup>29</sup> This account illustrates the power of the pen and political discussion and its ability to bridge the Atlantic.

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<sup>26</sup> Thomas, Clarkson, *The History of the Rise, Progress, and Accomplishment of the Abolition of the African Slave-Trade by the British Parliament*, (London: John W. Parker, West Strand, 1786), 64.

<sup>27</sup> Samuel Estwick, *Considerations on the negroe cause commonly so called, addressed to the Right Honourable Lord Mansfield*, (London: J. Dodsley, 1773), 7.

<sup>28</sup> The Somerset Case was merely another example of how both the legal pluralities and power structure of these two dominions could collide.

<sup>29</sup> Alfred W. Blumrosen and Ruth G. Blumrosen, *Slave Nation: How Slavery United the Colonies and Sparked the American Revolution*, (Illinois: Source Books Inc, 2005), 145.

The distorted precedent of the Somerset Case and its ability to bridge the Atlantic was further exemplified in the creation of the United States of America. As historian Jack P. Greene argues in his article *Colonial History and National History: Reflections on a Continuing Problem*, the concentration of power in a strong central government was the greatest threat to America – ultimate authority had to be vested in the states and their white settlers. This balancing of slave states and free states kept the balance of power in favour of Southern slave holders.<sup>30</sup> This ideal was entrenched in law with the implementation of “Article Four, Section Two, Clause 3” of the United States Constitution. Known as the Fugitive Slave Clause, the Constitution stated: “No Person held to Service of Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law of Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.”<sup>31</sup> This clause ensured that a slave passing through a Free State would remain a slave; a legal idea not established in the English Empire. This positive law ensured the property of slaves and eliminated the complications developed by legal pluralities between two royal dominions – a legal problem created by the Somerset Case.

The pamphlets published after the Somerset Case were written by both anti-slavery and pro-slavery activists. The abolitionists cautioned their audience that if liberty was taken away from slaves and they lost their right to remain in England, then the liberty of every individual was vulnerable. Conversely, pro-slavery writers urged their audiences to realize that if the government was able to alter definitions of the

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<sup>30</sup> Jack P. Greene, “Colonial History and National History: Reflections on a Continuing Problem,” *The William and Mary Quarterly* 54, no. 2 (April 2007): 241.

<sup>31</sup> ‘The United States Constitution,’ Article Four, Section Two, Clause 3, (1787).

property of masters by nullifying slaves as chattel property, then they could tamper with and dispossess the property of any citizen. As Edward Long argued in his pamphlet *Reflections upon the judgement lately awarded by the Court of King's Bench* in 1772, “If the property spoken of is not to be secured to him by the laws which permit and invite him to buy it, then is there neither faith, justice, nor equity in them; they are no better than empty illusions, snares to the industrious subject, and eminently reproachful to the nation.”<sup>32</sup> Those who championed the slave trade urged readers to consider the importance of property in English law. Property was arguably one of the fundamental rights of freeborn English men and women in their society. Heralded by John Locke’s *Second Treatise of Government*, a government was only legitimate if it had the consent of the people and part of that consent depended on its ability to protect the lives, liberty and property of said people. If they failed to do so, the people could rebel. The lawyers in the Somerset Case presented this conflict between liberty and property, and it continued to be the dominant question and concern in the subsequent pamphlet debate on the issue. Long continued this line of argument by stating that

Something more, however, than the pretended magical touch of the English air seems requisite, to divest him of what has been so solemnly guaranteed by the consent of the nation in Parliament; for, when he made the purchase, he was not approached of those mysterious and invisible emanations of English liberty, which were to make the bargain void, and, like the presto of a juggler, turn his gold into counters.<sup>33</sup>

By arguing that the decision had an unfair effect on slave owners, that they will lose their slaves and in effect lose valuable merchandise, Long entrenched slavery into English conceptions of property.

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<sup>32</sup> Edward Long, *Candid reflections upon the judgement lately awarded by the Court of King's Bench: in Westminster-Hall, on what is commonly called the negroe-cause, by a planter* (London, 1772), 40-41.

<sup>33</sup> *Ibid.*, 41.

Besides the prevalent conflict between property and morality, the pamphlets that were circulated following the Somerset Case had three thematic elements. First, pro-slavery enthusiasts offered arguments that positive law did exist through Parliament's sanction of the African slave trade. Second, they exhibited the persuasive arguments provided and demanded by both sides of the debate dealing with slavery for Parliament to create a positive law. Finally, the continued descriptions of the plight of the African slave at sea and in the plantations proved important and contentious in the pamphlet and public debates from the 1770s into the nineteenth century. The proliferation of pamphlets discussing these topics stoked and influenced public political discussion, and may well have had an influence similar to Lynn Hunt's argument that circulated written material created a strong sense of equality and individuality during the late eighteenth century. Certainly these pamphlets continued the debate between property and the rights of man introduced by the trial, and also prompted Parliament to create a positive law on slavery.

Those who championed the slave trade most frequently provided arguments against Mansfield's interpretation of the law, outlining points that contradicted his decision. Statements ranged from the belief that slaves were felons in Africa and sentenced to slavery,<sup>34</sup> to the theological argument that Blacks were the descendents of Ham who was shamed and banished by Abraham. In that line of religious argument, Ham's descendents (presumed to be Blacks) were destined to be slaves.<sup>35</sup> Most ardent,

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<sup>34</sup> John Peter Demarin, *A Treatise Upon the Trade from Great-Britain to Africa*, (London: R. Baldwin, 1772), 12.

<sup>35</sup> Candidus. *A letter to Philo Africanus, upon slavery; in answer to his of the 22d of November, in the General Evening Post*, 1788, 5.

however, was the opinion that Stewart's right to own Somerset was a categorical legal right established through positive law. This argument was presented by an African merchant John Peter Demarin in 1772, by Samuel Estwick in 1773, and later by an anonymous pro-slavery activist, using the pseudonym 'Candidus' in 1788. Demarin first contended in *A Treatise Upon the Trade from Great-Britain to Africa*, that Stewart did not need a written contract to own Somerset because the Acts of Parliament establishing the African slave trade superseded the need for a contract.<sup>36</sup> Next he belittled Francis Hargrave's submission in the Somerset Case by asking "What vain pretence of liberty can infatuate people to run into so much licentiousness, as to assert a trade is unlawful, which custom immemorial, and various acts of parliament have ratified and given a sanction to?"<sup>37</sup> According to Demarin, Hargrave was wrong to assert the unlawfulness of slavery, as it had been ratified by "...acts of parliament, by ancient usage, by religion, by justice, and by true humanity."<sup>38</sup> Demarin believed that slavery was lawful because it was sanctioned through multiple legal and natural practices. This view was reaffirmed by Candidus in *A letter to Philo Africanus, upon slavery; in answer to his of the 22d of November, in the General Evening Post* in December 1788, when he stated that "the commerce in slaves within the dominion of Great Britain is founded upon, and supported by acts of parliament."<sup>39</sup> Although there were no laws that asserted the existence of slavery in England, proslavery activists believed that positive law permitting the African slave trade gave masters the right to possess slaves in England. Thus, pro-slavery advocates arguing against Mansfield's final decision contended that

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<sup>36</sup> Demarin, 16.

<sup>37</sup> Ibid, 7.

<sup>38</sup> Ibid, 16.

<sup>39</sup> Candidus, 28.

his ruling was unfounded since the African slave trade was also supported in spirit by Parliament, if not by statute itself. On this theme they were insistent and persistent.

Demarin's arguments were strengthened by Samuel Estwick's *Considerations on the negroe cause commonly so called, addressed to the Right Honourable Lord Mansfield*, which declared in 1773 that Lord Mansfield outright ignored this form of positive law that already existed in England. Estwick contended that "although the slavery of Negroes is unknown to the common law of this country, and acts of parliament are silent thereupon; yet the right which Mr. Stewart claims in the Negroe, Somerset, is a right given him by the act of parliament."<sup>40</sup> While there were no laws that actually sanctioned slavery in England, there was a positive law authorizing the existence of the African slave trade, and in that law Stewart had legal property in James Somerset. Estwick argued that there were no Acts of Parliament that explicitly stated where and when a Black was a slave and where and when they were free. Be that as it may, property was a strong notion in English law, and "...where property is once legally vested, it must legally remain; until altered or extinguished by some power co-equal to that which gave it."<sup>41</sup> Estwick's pamphlet was dedicated to illustrating the short comings of Lord Mansfield's final ruling in the Somerset Case. The idea that positive law did exist ensuring the right of Stewart to own Somerset was a fact that he believed Mansfield, a knowledgeable Member of Parliament, purposely disregarded in his final decision.

Estwick carried this argument further when he averred that no law could exist that was inconsistent with the law of England. He insisted that in 7 and 8 (1695 and

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<sup>40</sup> Estwick, 11.

<sup>41</sup> *Ibid*, 19.

1696) William III it was declared, "...that no law, usage, or custom, shall be made or received in the plantations, repugnant to the laws of England."<sup>42</sup> According to Estwick, it was impossible for a law to exist in the plantations that conflicted with the laws of England. If slavery could not exist in England then it could not exist in the colonies either. "If property, therefore, in Negroes, was repugnant to the law of England, it could not be the law of America; because by the same statute, wherever this repugnancy is, there the law is ipso facto null and void."<sup>43</sup> Therefore, slavery could only exist in America if it had legal sanction in England. Without legislation created by Parliament permitting the trade, these laws in the colonies could never have been established. Accordingly, the existence of laws sanctioning the African slave trade and allowing slavery in the colonies, in effect, made slavery lawful in England. The pamphlets created by pro-slavery writers challenged Mansfield's decision by continuing to assert the powerful notion of property in English law, as well as by championing the belief that slavery was sanctioned through the positive laws which permitted the African slave trade and allowed slavery to exist in the colonies.

As a result of the Mansfield verdict, the pamphlets published after the Somerset Case increasingly called for Parliament to sanction a law either enforcing or extinguishing slavery in Britain as well as in the colonies. This was done by the American humanitarian Benjamin Rush in 1773, by the British lawyer, William Bolla, living in Massachusetts, as well as by Demarin and Candidus. Candidus urged the importance of creating positive law on the institution of slavery and the slave trade. He insisted that if all the arguments concerning the existence of slavery in England needed

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<sup>42</sup> *Ibid*, 25.

<sup>43</sup> *Ibid*, 26.

were positive law to ensure or destroy it, Parliament must act to redress this issue.<sup>44</sup> In his pamphlet, *An Address to the Inhabitants of the British Settlements in America, Upon Slave-keeping*, Rush predominantly relied on sentimental and humanitarian arguments and concentrated upon the immorality and unchristian nature of the slave trade. Rush declared the importance of Parliament making slavery unlawful in England and outlawing the African slave trade. He argued that the first step in this fight against evil was ending the importation of slaves; “For this purpose let our assemblies unite in petitioning the king and parliament to dissolve the African committee of merchants: It is by them that trade is chiefly carried on to America. We have the more reason to expect relief from an application at this juncture, as by a late decision in favor of a Virginia slave in Westminster-Hall, the Clamors of the whole nation are raised against them.”<sup>45</sup>

The Virginian slave he was referring to was James Somerset. Rush followed the Somerset Case and thereafter argued the need for Parliament to create positive law confirming that slavery did not exist in England. In 1776, William Bollan followed in Rush’s footsteps when he published *Britannia Libera, or a Defence of the Free State of Man in England Against the Claim of any Man There as a Slave. Inscribed and submitted to the Jurisconsulti, and the Free People of England*. Bollan outlined the legal history of slavery in European nations and concluded by stating that:

...parliaments, it is hoped, will ever be solicitous to preserve the kingdom entirely free, and moreover to prevent *Britannias* pure and noble blood from being polluted by the multiplicity of those conjunctions which produce such a motley disagreeable race, instead of establishing *slavery*, to the great

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<sup>44</sup> Candidus, 18-19.

<sup>45</sup> Benjamin Rush, *An Address to the Inhabitants of the British Settlements in America, Upon Slave-Keeping; To which are added, observations on a pamphlet, entitled, “Slavery not forbidden by Scripture; or, A defence of the West-India planters,”* (Early American Imprints. First Series; No. 12994, 1773), 19.

and lasting prejudice of honour and welfare.<sup>46</sup>

Unlike other abolitionists who played on the emotions of their readers, Bollan built upon the arguments of the Somerset and Cartwright Cases pleading that Britain was too moral a nation to permit slavery, and Parliament needed to prohibit the trade as it would undermine her moral credibility and superiority. Following Mansfield's decision in the Somerset Case, abolitionists urged Parliament to prohibit the slave trade, and ensured the subject would remain a critical debate in society through pamphlets.

The need for Parliament to create a positive law on the state of slavery in England was also expressed and played upon by pro-slavery enthusiast Demarin. In his pamphlet *A Treatise Upon the Trade from Great-Britain to Africa* he insisted that:

...it may be expedient, that government should positively declare the laws, which are to take place with respect to slaves for the future; and should lay them down in such plain terms, that it may not be possible to mistake them: and if the law African trade is in reality so contrary to law and humanity as some have set forth, let it be demolished at once by act of the legislature, for it certainly is more eligible to be torn to pieces by a lion, than gnawed to death by vermin.<sup>47</sup>

Demarin outlined both the importance of establishing law in Parliament as well as the fact that the continued arguments and seemingly contradictory decisions by courts were thoroughly unhelpful and unproductive. Demarin likened the slavery cases of the century to the destruction of a legal and, in his eyes, useful trade. With Mansfield's ruling in the Somerset Case, abolitionists and pro-slavery enthusiasts realized that Parliament was the only authority that could not only sanction or eradicate slavery in England, but also secure or end the African slave trade. By creating these pamphlets,

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<sup>46</sup> William Bollan, *Britannia libera, or, A defence of the free state of man in England [microform] : against the claim of any man there as a slave inscribed and submitted to the jurisconsulti, and the free people of England*, (London : Printed, and sold by J. Almon, 1772), 47.

<sup>47</sup> Demarin, 11.

abolitionists and pro-slavery writers opened the political discussion to the public, a process that would not have taken place even two decades earlier. They made certain the subject remained a contentious and burning issue in society, both sides urging their supporters to campaign, and both beseeching Parliament to make a final and conclusive decision on slavery and the slave trade.

The abolitionists successfully used pamphlets to circulate the argument that the Somerset Case extinguished slavery in the nation, and used them to create a public forum to debate proslavery writers. The abolitionists were also able to capitalize on the growth in, and appetite for, literature available to the public. In doing so, they wrote about the plight of the African slave appealing to the empathy of their readers and the evident sense of human sentimentality, and the sanctity of the human body. By writing about religious views against slavery, and speaking of their hardships at sea and on the plantations, abolitionists illustrated that slavery conflicted with British ideals of liberty and the rights of man. While proslavery enthusiasts declared that slavery was lawful because slaves descended from Ham and Canaan, abolitionists declared that slavery clashed with Biblical scripture. Rush argued that although slavery was used by the Hebrews, at the year of the Jubilee all the Hebrew slaves were set free, and it was deemed unlawful to keep them without their own consent.<sup>48</sup> Rush declared that the greatest sins Jesus preached against were present in the act of slavery – intemperance, pride, theft, among others.<sup>49</sup> Furthermore, he argued that the ownership of a slave by a Christian was dangerous because the possession of other humans would corrupt the

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<sup>48</sup> Rush, 11.

<sup>49</sup> *Ibid*, 12-13.

master.<sup>50</sup> The maltreatment of a slave by masters, particularly by those who referred to themselves as Christians, was hypocritical to the abolitionist writers. In response, they argued that slavery and Christianity were contradictory ideas, and that slavery as an institution conflicted with the growth of the rights of man – a mentalité that should be vital to the Christian belief in, and the theological importance of, compassion.

The horrendous treatment of slaves during the middle passage across the Atlantic and on the plantation had become by the mid-eighteenth century common knowledge in England and offended the public's sensibilities and empathy for the slave's condition, as well as the Christian understanding of and belief in the sacredness of the human body – a body after all that God had created in his own image. According to historian Christopher Leslie Brown,

over time the British knew more about the nature of life in the colonies and how the slave system operated. It became more common to doubt the morality of the slave system because certain intellectuals did too, because prominent theologians, philosophers, and historians raised troubling questions about the moral and legal foundations on which the system stood.<sup>51</sup>

English society was becoming sensitized to the plight of the African slave. Even in the Somerset Case, Stewart's Counsel John Dunning affirmed the 'cruel usage' that slaves were subjected to on plantations. After the Somerset Case, abolitionists continued to share horrifying stories of the experiences of African slaves in the British colonial world. Three men who wrote of the brutalized experiences were Benjamin Rush, the Christian theologian John Wesley, and the Anglican clergymen and former slave ship captain John Newton. Rush argued that it was essential to create a law deeming the

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<sup>50</sup> *ibid*, 16.

<sup>51</sup> Christopher Leslie Brown, *Moral Capital: Foundations of British Abolitionism*. (Raleigh: University of North Carolina Press, 2006), 98.

African slave trade illegal because of the inhuman treatment of slaves. Rush urged readers to:

Think of the many thousands who perish by sickness, melancholy, and suicide, in their voyages to America... Mothers are torn from their Daughters, and Brothers from Brothers, without the Liberty of parting embrace. Their master's name is now marked upon their breasts with a red iron... Behold one covered with stripes, into which melted wax is poured --- another tied down to a block or a stake... See here one without a limb, whose only crime was an attempt to regain his liberty.<sup>52</sup>

Rush pleaded with his readers to help the African slaves. He believed that the privileges which white English men enjoyed everyday should be extended to all men of colour.

While Rush spoke of the poor treatment of the African slaves in 1773, one year later John Wesley shared the experience of slaves throughout the colonies. John Wesley explored the immoral laws that existed in each colony and the 'cruel usage' of slaves that visitors had experienced. The law of Jamaica stated that any slave that ran away and was absent for more than twelve months would be classified as 'rebellious.' By law fifty pounds would be awarded to any person who killed or brought the live body to the master.<sup>53</sup> In Virginia, the law on slavery stated that, "After [a] proclamation is issued against slaves that run away, it is lawful for any person whatsoever to KILL AND DESTROY such slaves, by SUCH WAYS AND MEANS AS HE SHALL THINK FIT."<sup>54</sup> The existence of laws that deemed lawful the murder of other humans was used by Wesley to show how colonial slave laws were not consistent with natural laws of justice. They were also used to exemplify how colonial laws on slavery could not possibly be deemed valid in England, a land where liberty, freedom, and where the

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<sup>52</sup> Rush, 22-23.

<sup>53</sup> John Wesley, *Thoughts Upon Slavery*, (Early American Imprints. First Series; No. 13762, 1774), 31-32.

<sup>54</sup> *Ibid*, 33.

rights of all God's children were held sacred in the constitution. Wesley recognized the importance of the slave trade to the economy of England. However, he believed that, "It is better to have no wealth, than to gain wealth, at the expense of virtue. Better is honest poverty, than all the riches brought by the tears, and sweat, and blood of our fellow-creatures."<sup>55</sup> Wesley maintained that liberty was a universal right and that according to English law; no human can deprive another of liberty.

Furthermore, after Wesley produced examples of the laws that were used in colonies to ensure slavery, he focused on the eyewitness accounts of punishments meted out to slaves. He relied on three accounts from: North Carolina, Jamaica and from Charleston, South Carolina. Thus, when writing on North Carolina, he offered the case of a female slave who had run away from her master. When caught, her master savagely beat her and then fastened her body to his horse and dragged her back to the plantation. By the time he had reached his house, she was dead.<sup>56</sup> Her anonymity reinforces the fact that in death, as in life, she was seen as little more than property. Likewise, Jamaica provides the story of punishment and death for another young Black woman of about eighteen-years old, who had been "swung by her hands, with heavy weights at her feet, and a man lashing her body with a hard whip; making pauses from time to time, and flinging pickle or salt and water on the wounds, the whip had made."<sup>57</sup> The eyewitness later notes seeing her dead body being carried away. Finally, Wesley wrote of a man in Charleston who after being tied down with ropes and confined with irons during sea passage in which he was tormented by the crew, he was in a weak condition and could barely walk. Both to, and from, the market he was lashed with whips. On the way home

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<sup>55</sup> Ibid, 45-46.

<sup>56</sup> Ibid, 71.

<sup>57</sup> Ibid, 72.

he fell to the ground and was continuously whipped until he rose, and then after walking a little further collapsed to the ground dead.<sup>58</sup> Wesley drew upon these three examples to show how the state of slavery in the colonies conflicted with the laws of England and the growth of human rights; especially the sacredness of the human body.

The appeal to human emotions was also used by John Newton, a former slave capturer on the Windward coast of the Caribbean. Newton reflected on the brutal acts of traders perpetuated against their captive slaves.<sup>59</sup> He believed that the sheer number of influential men who had protested against the trade would soon conclude with the abolition of the trade and institution. He, like Wesley, offered personal experiences for his reader to consider. In his 1788 pamphlet, *Thoughts Upon the African Slave Trade*, he shared his memory of awakening during the middle passage to a baby crying and witnessing a fellow shipmate threatening the mother to silence it. When the baby continued to cry, the trader threw it into the sea. Upon reading such accounts, he believed the public must feel sorrow and sympathy for Africans.<sup>60</sup> Newton also explored the idea that not only was the slave trade immoral, but the way in which the British conducted their trade was harsher than that of other nations.<sup>61</sup> Using the Portuguese as an example, Newton claimed that the British ships, caring more about quantity than quality, treated their slaves less humanely. Newton explained, “(I)f the English ships

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<sup>58</sup> *Ibid.*, 72-73.

<sup>59</sup> John Newton is perhaps more famously known for his Christian hymns, specifically the hymn most associated with slavery, freedom, and rights, “Amazing Grace” which was printed in his book *Oiney Hymns* in 1779.

<sup>60</sup> John Newton, *Thoughts Upon the African Slave Trade*, (London: Printed for J. Buckland; and J. Johnson, 1788), 18.

<sup>61</sup> This argument was further developed by Frank Tannenbaum’s thesis: Frank Tannenbaum, *Slave and Citizen: The Negro in the Americas*, (Los Angeles: University of California, 1947). Tannenbaum argued that slavery in the French and Spanish colonies was less harsh than in the British colonies because the Roman Law had been received in the French and Spanish colonies and the Roman Catholic Church had an influential role. Conversely, in the English colonies, local rules were created by local assemblies dominated by slave owners.

purchase Sixty Thousand Slaves annually, upon the whole extent of the Coast, the annual loss of lives cannot be much less than Fifteen Thousand.”<sup>62</sup> Newton illustrated how British slave traders did not equate the loss of a slave with the loss of a human being, but as a loss of revenue and chattels. Examples like this illustrated to the public that the trade contradicted growing ideas of individual rights. Christopher Brown concurs with Newton in his analysis: Britons in the late-eighteenth century were becoming more aware of the immorality of the slave trade.<sup>63</sup> This public conscience fueled by influential abolitionist leaders ensured that the question of the slave trade remained a contentious issue in society, eventually translating into a sustained Parliamentary debate too.

As the first-hand accounts of former slave traders and others who had witnessed the brutality of the slave trade undoubtedly opened public eyes to the inhumane trade, no account could stir as much empathy as that of a former slave. The British abolition movement inspired and gained inspiration from Olaudah Equiano, also known as Gustavus Vassa, a freed slave who had purchased his freedom and became involved in the British and colonial abolition movement. In his biography *The Interesting Narrative of the Life of Olaudah Equiano or Gustavus Vassa*, he wrote of the heinous crimes that he had witnessed. Many scholars, like the Nigerian writer S. E. Ogude and more recently Vincent Carretta, have questioned the authenticity of his autobiography. Ogude believed that his narrative was a mixture of both factual and fictional events, illustrated by the similarities with first-hand accounts written by Benezet and Clarkson. Moreover,

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<sup>62</sup> Newton, 36.

<sup>63</sup> Christopher Leslie Brown, *Moral Capital: Foundations of British Abolitionism*. (Raleigh: University of North Carolina Press, 2006), 8.

Carretta provided baptismal and navy records stating that Equiano was born in South Carolina around 1747,<sup>64</sup> and not Africa and that he was much younger during the events he shared, that he lied about his age in order to give the stories more credibility. Carretta argues that Equiano relied on oral histories and not factual first-hand accounts.<sup>65</sup>

Whether these assertions were true or fabricated does little to alter the political importance of Equiano's narrative and the circulation of his account of the slave trade. His biography was read by leading political figures in Great Britain. Equiano sent his book to members of Parliament, and advertised his book on speaking tours throughout England, Scotland, Wales, and Ireland. His narrative played an influential role in galvanizing anti-slavery sentiment throughout Great Britain

Equiano shared accounts of his capture, his middle passage, his life as a slave, and his employment as a merchant in the slave trade both before and after he bought his freedom. During his middle passage he reminisced about being flogged for not eating and watching other prisoners being cut for attempting to jump in the water. At one point, Equiano wrote "This wretched situation was again aggravated by the galling of the chains, now become insupportable; and the filth of the necessary tubs, into which the children fell, and were almost suffocated. The shrieks of the women, and the groans of the dying, rendered the whole a scene of horror almost inconceivable."<sup>66</sup> He also shared

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<sup>64</sup> Vincent Carretta, *Equiano, the African: biography of a self-made man*, (Athens: University of Georgia Press, 2005), xiv.

<sup>65</sup> Equiano Oiaudah, *The interesting narrative of the life of Olaudah Equiano or Gustavus Vassa, the African*, (Peterborough: Broadview Press, 2001), 30.

This is an argument that occurs in African-American abolition scholarship as well. Ex-slavers depended heavily on Northern abolitionists for their access to money and publishers, and thus their writings were heavily influenced by the views, stories and opinions of the anti-slavery movement. As Frederick Douglass wrote in his narrative, "'Give us the facts,' said [John A.] Collins, 'we will take care of the philosophy.'" Frederick Douglass, *The Life and Times of Frederick Douglass*, (New York: Dover Publications, 1845), 153.

<sup>66</sup> Equiano Oiaudah, *The interesting narrative of the life of Olaudah Equiano or Gustavus Vassa, the*

graphic stories about female slaves, some younger than ten years old, being raped, another slave, who had liaison with a white prostitute, was tied to the ground and had his ears cut off. Yet another slave was half hanged and burnt for attempting to poison a white overseer,<sup>67</sup> and still another had flaming sealing wax poured on his body. Finally, many slaves had pieces of flesh cut from their bodies<sup>68</sup> or had iron muzzles and thumb screws used upon them for the most minor of mistakes or faults.<sup>69</sup> The growth in this sort of literature aided the abolition movement, as more people became aware of the atrocities that occurred to Africans during capture, the middle passage, their sale, and their plantation experiences. Whether produced by clergymen, ex-slavers, or ex-slaves, these first-hand accounts flooded the nation and appealed to, and enflamed the empathy of, the English people.

The appeal to human emotion was the tactic frequently used by the abolitionists. These writers shared stories of masters who violated the sacredness of the human body by mutilating and murdering their slaves. These were actions that British people would see as savage. In order to challenge these first-hand accounts circulating the nation, those who championed the slave trade denied the plight of the African slave. In 1773, prior to the writings of Rush and Equiano, Richard Nisbet denied the cruel nature of the slave trade in *Slavery not forbidden by Scripture. Or, A defence of the West-India planters: from the aspersions thrown out against them*. Possibly a retort to the submission made by John Dunning in the Somerset Case, Nisbet proclaimed,

The addresser would make us believe, that negroes are often put to death, by the laws, for such a trifling transgression as stealing

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*African*, 73.

<sup>67</sup> *Ibid*, 133-134.

<sup>68</sup> *Ibid*, 138.

<sup>69</sup> *Ibid*, 139.

a bit of bread. It is strange that he will discover his ignorance in every line. They are never capitally punished, except for the most flagrant crimes – none condemned without the clearest proofs – notorious acts of theft, which in England would bring any person to the gallows...<sup>70</sup>

Nisbet's argument was that the slaves in the trade were treated with the same laws and rights as others living in English society. Moreover, on a slave's daily life he argued that "I dare say it will appear, that they do not suffer the hardships that are so pathetically represented by many people, who are totally unacquainted with the West-Indies".<sup>71</sup> His writing followed in the footsteps of Tho[mas] Thompson who stated in 1769, and three years before the Somerset Case, that the slave trade was not immoral, as those enslaved were shown mercy. If they were not enslaved, he suggested they would have been murdered. He argued that the word 'slave' came from the word 'salvage,' as by enslaving the captives of war they were saving them from death. Thompson proclaimed, "Slavery then had its origins from a principle of humanity, and averseness to shedding blood. Consequently, rather than slay those whom they took in war, chose to dispose of them in a milder way, and sold them into servitude."<sup>72</sup> Similar to abolitionists, pro-slavers now had a public venue in which they could argue the merits of slavery. The Somerset Case only catalyzed the proliferation of these accounts. As those who championed slavery were threatened by James Somerset's release and the distorted precedent spread by the abolitionists, they began to publish pamphlets in defense of the slave trade.

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<sup>70</sup> Richard Nisbet, *Slavery not forbidden by Scripture. Or, A defence of the West-India planters: from the aspersions thrown out against them*, (London, 1773), 18-19.

<sup>71</sup> *Ibid*, 28.

<sup>72</sup> Tho. Thompson, *The African Slave Trade for Negro Slaves, shewn to be consistent with principles of humanity, and with the laws of revealed religion*, (Canterbury, London, 1769), 21.

Therefore, in the years after Mansfield's decision in the Somerset Case, many pamphlets were published in support of and against slavery. Abolitionists shared first-hand accounts of the slave trade and appealed to the emotions of their readers. Conversely, those who championed the slave trade argued that positive law existed through sanction of the African slave trade, and denied that slaves were treated poorly. Both sides continued the debate relying upon property and morality or arguments that had existed since the Cartwright Case of 1569. However, the concern for the human body, influenced by the increase in literature, aided the abolition movement as newspaper accounts and the increased numbers of pamphlets describing the plight of the African Slave were spread throughout English society, and were more influential than appeals to money and law. Although members of both sides of the debate were active for over a century, it was this increase in literature, the middling sort's new found position in society, and the burgeoning belief in individual rights that culminated in the Somerset Case being the indication that abolition was soon to come in England.

## CHAPTER 3

### HABEAS CORPUS AND THE RIGHTS OF MAN: RE-THINKING SLAVERY DURING THE SCOTTISH ENLIGHTENMENT

While the number of pamphlets concerning slavery increased following the Somerset Case, even before 1772 opinions on slavery were dominated by the transatlantic abolition pressure group headed by Philadelphia Quaker Anthony Benezet as well as scholarly writers primarily from Scotland. The perspectives presented by Scottish Enlightenment thinkers reveals that many of the ideas used in the abolition circles were inspired in Scotland. Specifically, the writings of George Wallace proved to be influential in Lord Mansfield's decision in the Somerset Case. Moreover, a consideration of the Scottish situation concerning slavery shows that the Somerset Case was possibly not the inspiration to cease slavery in Scotland, but that Scotland was by the mid-eighteenth century more likely to abolish slavery within its borders. Scotland did not have over a century of conflicting legal decisions, as well as an entire empire, and its economic position and empire cohesiveness to consider. Finally, Scottish common law and the perception of habeas corpus (wrongous imprisonment) in Scotland allowed for a clearer legal notion of liberty for its subjects. Moreover, the conception of 'wrongous imprisonment' that developed in Scotland in the late-seventeenth century/early-eighteenth century possibly influenced the understanding of habeas corpus offered by Lord Mansfield in the Somerset Case. Therefore, eighteenth century intellectual arguments by Scottish legal theorists most likely influenced the legal atmosphere in London, resulting in a more liberal conception of the rights of man and his position in law.

The transatlantic abolition group formed in the 1770s was led by Anthony Benezet, a Quaker residing in Philadelphia. Benezet was joined by Granville Sharp, the American republican and staunch abolitionist Benjamin Rush, the Christian theologian John Wesley, and the English physician John Fothergill. The five men began writing back and forth, and appropriating each other's pamphlets concerning abolition and slavery in the British Empire. The five men routinely updated each other concerning advancements in the abolition movement in their locales as well as details of how they might organize their pamphlets. For example, in a letter from Anthony Benezet to Granville Sharp written in March of 1773, Benezet explained "a Lawyer in New England, have undertook to take such negroes, as have applied under their protection and have put their owners, upon proving the legality of their right over those persons".<sup>1</sup> They also updated each other on the publication of pamphlets or articles in their respective areas. Benezet wrote Sharp about omissions and additions other abolitionists put in his pamphlet as well as informing him of newspaper articles pertinent to their arguments.<sup>2</sup> An important aspect of how this transatlantic union worked was that the men would republish each other's work. Thus, Benezet appropriated parts of Sharp's *A Representation of the Injustice and Dangerous Tendency of Tolerating Slavery*, and Sharp drew upon Benezet's *Some Historical Account of Guinea*. Abolition was very important for all these men, so they endorsed the works of other abolitionist writers, appropriating parts that they felt strong for the cause.

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<sup>1</sup> Anthony Benezet. Letter to Granville Sharp. 29, March, 1773. Granville Sharp Letters to, on slavery 1768-1773. New York Historical Society, New York, New York.

<sup>2</sup> Anthony Benezet to Granville Sharp. November 1772. Granville Sharp Letters to, on slavery 1768-1773. New York Historical Society, New York, New York.

Many historians including Maurice Jackson believed that the transatlantic abolition group was pivotal in the arguments of the Somerset Case, because, as he states in *Let This Voice Be Heard*, copies of Anthony Benezet's work were given to Lord Mansfield, Lord North, and four copies were given to the counsel for Somerset. Jackson goes on to argue that Benezet's work had clear influence on Lord Mansfield's decision. Jackson separated Mansfield's decision into three major themes. First, he suggests that Mansfield understood that the Africans were human and second that all humans have the right of liberty. Finally, Jackson notes that England's positive law did not legalize slavery. Jackson credits Benezet with the argument that Africans were humans, and believed that the idea that all humans deserved liberty could also be credited to Benezet, possibly Sharp, or perhaps even the Scottish intellectual Francis Hutcheson. Here the connection between abolitionist and Scottish enlightenment is made. Jackson also remarked that Benezet's work was highly influenced by the work of George Wallace's *A System of the Principles of the Laws of Scotland*.<sup>3</sup> The principles of the Scottish Enlightenment were also passed on to Benjamin Rush, who, upon returning from his studies in medicine in Edinburgh, was influenced by the liberalizing Scottish Empiricist arguments circulating at the time.<sup>4</sup> Benezet had asked Rush to write an essay to convince Presbyterian members of the Assembly to support the abolitionist cause. Rush's essay would become a key component of the early abolition movement. It was published in 1773, titled *An Address to the Inhabitants of the British Settlements in America upon Slave-Keeping*. While the transatlantic abolition group became significant

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<sup>3</sup> Maurice Jackson, *Let This Voice Be Heard* (Philadelphia: University of Pennsylvania Press, 2009), 146.

<sup>4</sup> Patricia Bradley, *Slavery, Propaganda, and the American Revolution* (Mississippi: University Press of Mississippi, 1998), 111.

in the wake of the Somerset Case, many of their views and the opinions expressed in the case, originated in Scotland amongst Enlightenment thinkers.

Slavery was a topic taken up by the Scottish intellectuals in the early eighteenth century. While it can be argued that Somerset's counsel's arguments were influenced by the transatlantic abolition pressure group, a stronger claim can be made that the counsel's arguments and Lord Mansfield's decision in the case originated in the works of Scottish Enlightenment writers. As a Scotsman, the degree of influence of Scottish intellectuals and the Scottish law upon Mansfield himself has become a point of discussion among scholars. Lord Mansfield was the first Scot to gain distinction in English law and the degree of influence his Scottish connections had on his legal profession remains debatable.<sup>5</sup> Moreover, his rise and prominence in legal and political circles took place at a time when many other influential Scots figures were becoming predominant in London society. The emergence of such figures as Alexander Wedderburn, John Stuart – Earl of Bute, and Henry Dundas reveal the growing importance of Scottish politicians in the 1760s and 1770s.<sup>6</sup> Added to these immediate political influences, there was of course a community of Scottish thinkers and writers whose ideas profoundly affected British and English views on the social and the political in the period. These scholars include Adam Ferguson, Adam Smith, John Millar, David Hume, Francis Hutcheson, and George Wallace.

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<sup>5</sup> James Oldham and William Murray Mansfield. *The Mansfield Manuscripts and the Growth of English Law in the Eighteenth Century* (Raleigh: University of North Carolina, 1992).

<sup>6</sup> See for example. Michael Fry, *The Dundas Despotism* (Edinburgh: John Donald, 2004). Lewis Bernstein Namier, John Brooke, *The House of Commons, 1754-1790: the history of Parliament, Volume I. Introductory Survey, Constituencies and Appendices* (London: HMSO, 1964), 166-175.

Adam Ferguson was an historian and a philosopher of the Scottish Enlightenment and is sometimes referred to as the ‘father of modern sociology.’<sup>7</sup> A professor from the University of Edinburgh, he was heavily influenced by the famed French writer and thinker Montesquieu, who believed that the state of slavery was neither useful to the master nor the slave.<sup>8</sup> On slavery, Ferguson wrote about the resilience and importance of liberty in all men. In his essay *An Essay on the History of Civil Society*, written in 1767, Ferguson wrote that “LIBERTY is a right which every individual must be ready to vindicate for himself, and which he who pretends to bestow as a favour, has by that very act in reality denied.”<sup>9</sup> Ferguson believed that Liberty was not at the will of an individual to impart on another individual, he believed that it was natural and existed in every human being. He wrote that while political establishments and institutions can nourish liberty, they do not have the power to preserve it.<sup>10</sup> In 1785, after numerous abolition groups were created and were beginning to demand Parliamentary debate, Ferguson strengthened his position on slavery in *Institutes of Moral Philosophy*, stating that,

No one is born a slave; because every one is born with all his original rights. No one can become a slave; because no one, from being a person, can, in the language of Roman law, become a

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<sup>7</sup> William B. Willcox and Walter L. Arnstein, *The Age of Aristocracy* (New York: Houghton Mifflin Company, 2001), 135.

<sup>8</sup> Montesquieu considered slavery a sin against the Holy Ghost. In Charles de Secondat Montesquieu, *The Spirit of the Laws volume 1* (Glasgow: D. Niven for J. Duncan & Son, 1793), 284, he writes that “But in a monarchical government, where it is of the utmost importance that human nature should not be debased or dispirited, there ought to be no slavery. In democracies where they are all upon an equality, and in aristocracies, where the laws ought to use their utmost endeavour to procure as great an equality as the nature of the government will permit, slavery is contrary to the spirit of the constitution; it only contributes to give a power and luxury to the citizens, which they ought not to have.” Many of the philosophers of the period who wrote about the wrongs of slavery quote Montesquieu, including George Wallace in his *A System of the Principles of the Law of Scotland* (Edinburgh: A. Millar, D. Wilson and T. Durham, 1760), 91.

<sup>9</sup> Adam Ferguson, *An Essay on the History of Civil Society* (Edinburgh: A. Kinkaid & J. Bell, 1767), 408.

<sup>10</sup> *Ibid.*

thing, or subject of property. The supposed property of the master in the slave, therefore, is matter of usurpation, not of right.<sup>11</sup>

Although written after the Somerset decision of 1772 and, therefore, not influential in Mansfield's decision, his pamphlet clarifies the position held in 1767. The belief that every human being had a right to his or her own liberty, and that it was natural and could not be given to them by a superior person, coincides with the observation that a master could not own a slave. If one man owned another, then he would control the liberty of another man. Adam Ferguson opposed the institution of slavery because he found it contrary to the natural rights of man.

Two less obvious Enlightenment figures influential in abolition theory were Adam Smith and David Hume. Adam Smith, famous for being a pioneer of political economics, also wrote on the nature of slavery in the British Empire. Smith rarely made a judgment on the existence of the slave trade. However, in his 1759 polemical work on civic humanism, *The Theory of Moral Sentiments*, Smith wrote,

There is not a negro from the coast of Africa who does not, in this respect, possess a degree of magnanimity which the soul of his sordid master is scarce capable of conceiving. Fortune never exerted more cruelly her empire over mankind, than when she subjected those nations of heroes to the refuse of the jails of Europe, to wretches who possess the virtues neither of the countries which they come from, nor of those which they go to, and whose levity, brutality and baseness, so justly expose them to the contempt of the vanquished.<sup>12</sup>

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<sup>11</sup> Adam Ferguson, *Institutes of Moral Philosophy* (Edinburgh: John Bell & William Creech, 1785), 219-220.

<sup>12</sup> Adam Smith, *The Theory of Moral Sentiments* (Edinburgh: A. Kinkaid & J. Bell, 1759), 402.

Although Smith wrote about the cruel misfortune of the slaves taken from the African coast, the majority of his contempt for the slave trade dealt, like most of his works, with the negative effect the trade had on the economy.<sup>13</sup> In *Scotland and the Abolition of Black Slavery, 1756-1838*, the noted historian Iain Whyte argues that while Adam Smith never argued for the emancipation of the slave trade, Smith believed that economic theory was based on “the free and competitive nature of labour” and thus free trade and political economy were inconsistent with slave society. Slaves were rarely inventive, and the only way they could be efficient was to make use of them in large numbers.<sup>14</sup> Although most Smithian views on economy were written after the Somerset Case, his noted work *The Wealth of Nations*, merely clarifies his position on slavery. His stance on slavery was explicit in the 1760s through his *Theory of Moral Sentiments*. In *The Wealth of Nations*, Smith noted that a slave was more faithful and worked harder under a gentle master, rendering him in a position more similar to a free servant and that the state of slavery was better under an arbitrary government than a free government. Using an example from Roman history, Smith wrote about a master named Vedio Pollio who ordered his slave to be cut up and fed to fishes. When he heard of this treatment, Augustus ordered Pollio to emancipate the slave, and the rest of his slaves too. Smith argued that “Under the republic no magistrate could have had authority enough to protect the slave, much less to punish the master.”<sup>15</sup> Although Smith did not reject slavery on moral grounds, his belief that it was not beneficial to the economy contributed to the political discussion of the period.

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<sup>13</sup> Istvan Hont and Michael Ignatieff, *Wealth and Virtue* (Cambridge: Cambridge University Press, 1983).

<sup>14</sup> Iain Whyte, *Scotland and the Abolition of Black Slavery, 1756-1838* (Edinburgh: Edinburgh University Press Ltd., 2007), 54.

<sup>15</sup> Adam Smith, *The Wealth of Nations, Volume 2* (London: Penguin Books, 1999), 169.

David Hume was another mid-eighteenth century Scottish intellectual who commented on the institution of slavery. Consistent with the views of Adam Smith, Hume believed that slavery was not beneficial to society. In “Of the Populousness of Ancient Nations” in *Essays and Treatises on Several Subjects*, as early as 1758, Hume argued that the practice of hired servants was more advantageous than that of slaves. Hume contended that, “All I pretend to infer from these reasonings is, that slavery is in general disadvantageous both to the happiness and populousness of mankind, and that its place is much better supplied by the practice of hired servants.”<sup>16</sup> Although intellectuals, like Hume and Smith, did not oppose the institution of slavery on moral grounds, their disapproval of the institution, based on economic reasons, was influential. Their beliefs, in contrast to those of the many evangelical writers of the period, mirror the multiple arguments in present scholarship concerning the abolition of slavery and why it occurred. Economic factors remain a logical and fair hypothesis to explain its end. Scholars such as Seymour Carrington, Joseph Inikori and Eric Williams have argued that the practice of slavery was abandoned when it became uneconomical with the decline of the West Indian plantations.<sup>17</sup> Although Hume and Smith did not draw upon moral arguments to oppose the slave trade and did not make specific arguments that were taken up by either counsel or Lord Mansfield in the Somerset Case, their

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<sup>16</sup> David Hume, *Essays and Treatises on Several Subjects*, (Edinburgh: A. Kinkaid and A. Donaldson, 1758), 217.

<sup>17</sup> Williams and Inikori both argue that slavery helped fuel British industrial capitalism in the late-eighteenth century and that it was abandoned when it was no longer beneficial. In Eric Williams, *Capitalism and Slavery* (Richmond: The William Byrd Press, 1944), Williams linked the rise and fall of slavery with mercantile and industrial capitalism. The capitalists sitting in parliament had taken the place of the West Indian company, and exports had become more important than re-exports. Williams argued that “In the new Parliament the capitalists, their needs and aspirations were paramount.” 134. Adam Smith’s *The Wealth of Nations* was influential in this shift in mercantilism to capitalism.

writings clearly added to the political and economic discussions amongst Scottish Enlightenment intellectuals which were incorporated into abolitionist discourse imperatives in the late-eighteenth and early-nineteenth centuries.

While Smith and Hume may not have drawn explicitly on moral imperatives to castigate slavery, others most certainly did. John Millar, Professor of Law at Glasgow University was one of the Scottish intellectuals that outright opposed slavery on legal and moral, as well as economic grounds. In *Observations concerning the Distinction of Ranks in Society*, Millar explained that villeinage died out in England as paid servants took over,<sup>18</sup> and that the Church became a supporter of abolition in the Middle Ages because the Church became popular with lower order men, and that it was in their best interest to free slaves as they would likely give money to the church.<sup>19</sup> Millar goes on to explain that slavery only became popular again because of the discovery of America and the use of human labour to make new world plantations productive. Millar posited, “Thus the practice of slavery was no sooner extinguished by the inhabitants in one quarter of the globe, than it was revived by the very same people in another, where it had remained ever since, without being much regarded by the public, or exciting any effectual regulations in order to suppress it.”<sup>20</sup> Millar went on to support Hume’s assertion that hired servants were more productive than slaves because a sense of liberty and personal gain gave men initiative.

In whatever light we regard the institution of slavery, it appears equally inconvenient and pernicious. No conclusion seems more

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<sup>18</sup> John Millar, *Observations Concerning the Distinction of Ranks in Society* (London: W. and J. Richardson, 1771), 211.

<sup>19</sup> *Ibid*, 225-226.

<sup>20</sup> *Ibid*, 231.

certain that this, that men will commonly exert more activity when they work for their own benefit, than when they are compelled to labour for the benefit merely of another. The introduction of personal liberty has therefore an infallible tendency to render the inhabitants of a country more industrious; and therefore, by producing greater plenty of provisions, must necessarily encrease the populousness, as well as the strength and security of a nation.<sup>21</sup>

By giving members of society a sense of liberty they were more likely to produce greater quantities as well as quality. Millar finished his argument by stating that “Considering the many advantages which a country derives from the freedom of the laboring people, it is matter of regret that any species of slavery should still remain in the dominions of Great Britain, in which liberty is generally so well understood, and so highly valued.”<sup>22</sup> Similar to the main argument of the Somerset Case, as well as the sentiments conveyed by Adam Ferguson, Millar believed that Liberty was an essential element in Great Britain and that the institution of slavery was entirely inconsistent with those beliefs.

George Wallace, a Scottish lawyer, was by and large the most influential writer on the Somerset Case. Wallace asserted his pro-abolition position, especially in his 1760 treatise entitled *A System of the Principles of the Law of Scotland*. Wallace argued that slavery was contrary to the laws of humanity. Wallace stated that “Indeed, a state of slavery appears to me to be so unnatural, so shocking, and so contrary to any humane feelings, that I cannot think of it without detestation.”<sup>23</sup> Wallace began his chapter on

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<sup>21</sup> Ibid, 234.

<sup>22</sup> Ibid, 237.

<sup>23</sup> George Wallace, *A System of the Principles of the Law of Scotland* (Edinburgh: A. Millar, D. Wilson and T. Durham, 1760), 91.

slavery by commenting on the problems with property, asserting that the world can never be equal as the moment some men acquire more property than others they are unequal and that a utopia can never be established as long as the concept of property persists.<sup>24</sup> Next Wallace attacked the idea of immemorial usage. Wallace stated “But custom cannot give sanction to cruel usages; and we ought not to determine concerning the lawfulness of unlawfulness, the justice or injustice of actions from the frequency alone, with which they are done. We ought to form our judgements from the dictates of nature, and from the obvious suggestions of humanity.”<sup>25</sup> Wallace believed that the arguments using custom and immemorial usage as justification for the persistence of slavery were not valid to give sanction to a practice that was contrary to the principles of humanity.

Following in the arguments concerning slavery and the principles of humanity, George Wallace argued that no man had the power to hurt himself, and, therefore, did not have the power to make himself a slave. He explained that,

The custom, that, the Law of Scotland, disables every man both from aliening and from purchasing it. Indeed, if one were to alien his liberty, and to addict himself to the Slavery of another, would not the Law, which restores men against pecuniary transactions, restore him against a deed, by which he sustains an inseparable loss?<sup>26</sup>

The laws of Scotland ensured that no man can take his liberty away from himself, let alone another human being. The concept of liberty could not be tampered with by another person, because it was an inalienable right that existed in every human being.

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<sup>24</sup> Ibid, 90.

<sup>25</sup> Ibid, 92.

<sup>26</sup> Ibid. 94.

In his treatise, Wallace highlighted the issue of what would happen if a slave came from America to Scotland. Wallace believed the state of slavery in America, and the principles upon which it was established, were “inhuman, and that therefore, every one of those unfortunate men, who shall happen to get into Scotland, is, and is entitled to be declared to be a free man.”<sup>27</sup> He argued that all judges should know that “As soon, therefore, as he comes into a country, in which the judges are not forgetful of their own humanity, it is their duty to remember that he is a man, and to declare him to be free.”<sup>28</sup> Wallace clearly stated his belief that slaves were men, and that slavery was inconsistent with the laws of nature. Moreover, it was up to judges to realize and ensure in law that they were free men. While many of the Scottish enlightenment thinkers commented on the institution of slavery, George Wallace was by far the most outspoken on the need for emancipation. Predating and clearly reflecting the arguments made by the counsel representing Somerset, Wallace argued against slavery on the principles of humanity and liberty.

While scholars believe that Mansfield final decision was heavily influenced by the transatlantic pressure group lead by Anthony Benezet – supported by the idea that Granville Sharp had James Somerset deliver copies of Benezet’s work to Lord Mansfield and Somerset’s counsel – a closer examination of George Wallace’s treatise shows a much stronger influence from his Scottish colleague. In his judgment, Mansfield stated that Africans were humans, and that all humans were entitled to liberty.

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<sup>27</sup> Ibid, 95.

<sup>28</sup> Ibid, 95-96.

Scholars tend to give Benezet and Sharp credit for influencing Mansfield in this decision and there is truth in this analysis.<sup>29</sup> However, it is no secret that Benezet and Sharp borrowed heavily from Wallace, and that Mansfield ruling, as Jackson asserts, shows many connections with the work of Sharp and Benezet.<sup>30</sup> However, Wallace's influence should be more heavily weighed. Lord Mansfield, being of Scottish descent, was more heavily influenced by Wallace's *A System of Principles of the Laws of Scotland*, which was published in 1760. The original observation that Africans were humans and the all humans were entitled to liberty can be found in Wallace's treatise. In his treatise he noted that "As soon, therefore, as he [a slave] comes into a country, in which the judges are not forgetful of their own humanity, it is their duty to remember that he is a man, and to declare him to be free."<sup>31</sup> As Wallace asserted that Africans were humans, he had earlier stated that "every man is endowed with liberty, has abilities to direct himself, and is naturally fond of exerting them."<sup>32</sup> While authors, such as Maurice Jackson assert that Benezet is responsible for influencing Lord Mansfield's final decision, as a learned man of the law, of Scottish descent, William Murray was surely influenced by the works of Wallace which appeared earlier than Benezet, and in turn, also profoundly influenced Benezet's work itself.

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<sup>29</sup> This was argued in Maurice Jackson, *Let This Voice Be Heard* (Philadelphia: University of Pennsylvania Press, 2009), 146; Stephen Wise, *Though the Heavens may fall: the landmark trial that led to the end of human slavery* (Cambridge: Da Capo Press, 2005), 124. Surely both authors rely on the accounts of this action in Prince Hoare, *Memoirs of Granville Sharp* (London: Henry Colburn, 1820), 81.

<sup>30</sup> Jackson, 146.

<sup>31</sup> Wallace, *A System of the Principles of the Law of Scotland*, 96.

<sup>32</sup> *Ibid*, 90.

Furthermore, the argument that immemorial usage was not sufficient to sanction slavery, originally made by Wallace, is also present in Mansfield's final decision. In the *Scot's Magazine* report, Lord Mansfield states that slavery

*must* take its rife from *positive* law; the origin of it can in no country or age be traced back to any other source: immemorial usage preserves the memory of positive law long after all traces of the occasion, reason, authority, and time of its introduction, are lost; and, in a case so odious as the condition of slaves, must be taken strictly.<sup>33</sup>

Both Wallace and Mansfield argued that positive law must exist in order to sanction or prohibit slavery in Great Britain. Immemorial usage, in which the reasons for the sanctioning are lost to all men, is not strong enough to enforce a law which is inconsistent with the laws of humanity. While the *Scot's Magazine* version of Mansfield's decision is more direct on this issue, echoing Mansfield and Wallace, Capel Lofft's report also comments on this assertion. Lofft observes that,

the state of slavery is of such a nature, that is it incapable of being introduced on any reasons, moral, or political; but only positive law, which preserves its force long after the reasons, occasion, and time itself from whence it was created, is erased from memory: It's so odious, that nothing can be suffered to support it, but positive law.<sup>34</sup>

Although it does not mention the term 'immemorial usage' or the 'idea of custom,' the observation that positive law is needed, and that no other reasoning is sufficient to sanction a trade as odious as slavery, communicates the same legal principles. In *The Mansfield Manuscripts*, the noted legal historian James Oldham argued that a popular interpretation of Mansfield's use of the term positive law is that it referred to statutory

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<sup>33</sup> Scots Magazine 1772 volume 34. (Edinburgh. Printed by A. Murray and J. Cochran), 297.

<sup>34</sup> Capel Lofft, *Reports of Cases Adjudged in the Court of King's Bench (1772-1774)* (Dublin: James Moore, 1790), 20.

law. However, it is possible that it meant “law originally enacted legislatively but perpetuated through immemorial usage.”<sup>35</sup> Oldham argued that this idea corresponded well with reported remarks by Mansfield from the February 7, 1772 session of the Somerset Case. Furthermore, it also corresponded with remarks made by Mansfield about James Wallace after his submission in support of Stewart. Mansfield stated in that he “had the power to *declare the law*, he had none *to make or create one* of the present occasion.”<sup>36</sup> This assertion supports the argument that ‘immemorial usage’ and ‘custom’ were clearly taken into consideration by Mansfield while judging the Somerset Case.

On the eve of the Somerset Case, many Scottish Enlightenment figures, including Adam Ferguson, Adam Smith, John Millar, David Hume, Francis Hutcheson, and George Wallace, wrote about slavery. Their work proved influential for understanding the intellectual arguments that developed in the slavery debate, but also help us to understand why Mansfield made the decision he did, and from where he drew his opinions and legal logic. Moreover, while it is important to understand that much of the slavery debate logic came from Scottish intellectuals, it is also pertinent to evaluate how the logic that influenced the Somerset Case influenced the slavery debate in Scotland too.

It is evident that the English common law influenced legal decisions throughout the entire Empire. After the union of Scotland and England in 1707, Scotland retained its own legal system. It preserved its own local government, courts, and system of laws.

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<sup>35</sup> James Oldham and William Murray Mansfield. *The Mansfield Manuscripts and the Growth of English Law in the Eighteenth Century* (Raleigh: University of North Carolina, 1992), 1230.

<sup>36</sup> *ibid*

Although Scottish courts were not bound by the laws of England, they were influenced by decisions in other legal jurisdictions, including those made in England. Just as the influence of the Somerset Case can be seen in the American colonies, the case had influence on Scotland. For example, *Knight v Wedderburn* was a Scottish slave case that took place in 1778, when a slave, Knight, declared that he was free after being baptized from his master Wedderburn. Illustrative of the Somerset Case's influence on Scottish legal thinking, as well as England's influence, is the line of argumentation developed by Wedderburn's lawyer Robert Cullen. Cullen relied on the Yorke-Talbot opinion of 1729 as well as the ruling by Lord Mansfield in the Somerset Case. Both Somerset and Yorke and Talbot concurred that baptism did not bestow freedom on a slave. Historians argue that the *Knight v Wedderburn* case was a result of the earlier decision in the Somerset Case, which is supported by the fact that the Somerset case is referenced throughout the *Knight v Wedderburn* case. An example of this is in the noted historian Seymour Drescher's *Abolition: A History of Slavery and Antislavery*, in which he uses the *Knight v. Wedderburn* case as an example of how the Somerset Case was used to prove that slavery did not exist. Drescher argued that in the final decision of the Knight case "Mansfield's three fundamental points: no legal support for slavery; no deportation; no residual source obligation, were reaffirmed."<sup>37</sup> While the argument that Mansfield's decision influenced the legal decision in the Knight case is sound, this chapter argues that the situation in Scotland was much more receptive for a legal decision concerning slavery and its existence than in England. Without a set of debatable legal decisions to contest, without the influence of powerful economic and imperial interests, the issue of

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<sup>37</sup> Seymour Drescher, *Abolition: A History of Slavery and Antislavery* (New York: Cambridge University Press, 2009), 103.

slavery and abolition could be considered more fully in the light of current moral and enlightenment thought.

Although Scotland did not have conflicting legal decisions, it had its own intellectual and legal battle with slavery in the eighteenth century. There were three relevant court cases in Scotland between 1756 and 1778 concerning runaway slaves, who were baptized and then claimed freedom. The court cases were *Montgomery v. Sheddan* (1756), *Spens v. Dalrymple* (1769), and *Knight v Wedderburn* (1778). After being baptized by Reverend John Witherspoon, James Montgomery was placed on a ship for Virginia by his master Robert Sheddan. On 21 April, 1756, he escaped and was incarcerated in the Edinburgh tollbooth. He pursued his freedom at the Court of Session in Edinburgh but died before the case could be decided. In *Spens v Dalrymple*, David Dalrymple had purchased David Spens (known as Black Tom) in the West Indies and had brought him back to Scotland in 1768. After Tom fell ill, he wished to return to the West Indies, but first asked his master to be baptized. Dalrymple had Spens jailed. The case never came to court because Dalrymple died later that year and Spens attained freedom as a result. In *Knight v Wedderburn*, Knight continuously challenged the idea that Wedderburn was his master, arguing that Wedderburn had promised him upon baptism that he would be free in seven years to go live with his wife and child. The Somerset Case in London, and the newspaper reports motivated Knight into taking the case to court. After two inferior courts produced contradictory rulings, the case came before Lord Kames and the Court of Sessions, where an eight to four vote confirmed

Knight's freedom.<sup>38</sup> It is important to note that while in England there were numerous court cases and numerous decisions on whether slavery existed in England that rivaled one another, in Scotland the first court case that came to fruition (the two prior did not come to court due the death of one of the participants), resulted in a judgment freeing the slave in question. Moreover, it resulted in a clear and precise judgment.

That the state of slavery is not recognized by the laws of this Kingdom, and it is inconsistent with the principles thereof, and finds that regulations in Jamaica concerning slaves, do not extend to this Kingdom, and repels the master's claim to perpetual service.<sup>39</sup>

The judgment in the Somerset Case merely stated that a slave could not be forcibly taken out of England, while the decision of the *Knight v Wedderburn* case ensured that slavery was inconsistent with and not recognized by the laws of Scotland.<sup>40</sup>

The degree of influence that Scottish figures had on the Somerset Case and the decision by Lord Mansfield is supported by two more examples: the fact that Mansfield stated a need for positive law to sanction an institution as odious as slavery as well as the use of habeas corpus. Upon the union of Scotland and England, it was decided that Scotland would keep its own legal system. The system combined elements from an uncodified civil law from Corpus Juris Civilis and common law. The main difference between the common law of England and the common law of Scotland is the focus on

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<sup>38</sup> Iain Whyte, *Scotland and the Abolition of Black Slavery, 1756-1838*, 17-18.

<sup>39</sup> Thomas Bayly Howell, Thomas Jones Howell, William Cobbett, David Jardine, *Cobbett's complete collection of state trials and proceedings for high treason and other crimes and misdemeanors from the earliest period to the present time* (London: R. Bagshaw, 1814), 3. The National Archives of Scotland

<sup>40</sup> See David Lieberman, *The Province of Legislation Determined: Legal Theory in Eighteenth-Century Britain* (Cambridge, C.V.P., 1989), John W. Cairns, "Rhetoric, Language, and Roman Law: Legal Education and Improvement in Eighteenth-Century Scotland," *Law and History Review* 9 (Spring, 1991): 31-58. John W. Cairns and T. David Ferguson, "Legal Humanism in renaissance Scotland," *The Journal of Legal History* 11 (1990): 40-65.

the use of precedent. In *The Scottish Enlightenment The Scottish Invention of the Modern World*, historian Arthur Herman explained that the decision by Lord Kames in the Knight v Wedderburn case was evidence of the Scottish approach to law. He argued that “Kames and his fellow judges had decided the case not on precedent but on ‘the dictate of reason,’ in order to assert a basic principle of equity and justice. It was a victory for the notion that man’s claim to liberty is universal.”<sup>41</sup> In Scotland, the courts sought to discover the reason and principles that justify a law instead of using a precedent as an example proving legality. Moreover, the importance of principles of natural justice, fairness and equity are important sources of Scottish law.<sup>42</sup> Lord Mansfield’s reasoning that positive law was needed to sanction slavery, and immemorial usage and custom was not strong enough, have probable origins in his Scottish legal teachings. A judge deciding on a strict English legal knowledge would have relied on the precedent set in the eighteenth century, either Yorke and Talbot or Holt. Mansfield’s Scottish legal training influenced his final decision, as true to the Scottish civil law, Mansfield decided that the reasoning for the precedent, immemorial usage and custom was lost to mankind, and, thus, slavery could only be sanctioned by the creation of positive statute law. Moreover, the belief that the trade was odious, signals that Mansfield believed that slavery contradicted natural law and fairness.

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<sup>41</sup> Arthur Herman, *The Scottish Enlightenment The Scottish Invention of the Modern World* (London: Harper Collins, 2001), 101.

<sup>42</sup> David Lieberman, *The Province of Legislation Determined: Legal Theory in Eighteenth-Century Britain* (Cambridge, C.V.P., 1989), 144-175.

Before the sixteenth century, habeas corpus was primarily used to check the jurisdiction of local courts by England's central courts.<sup>43</sup> While it was used to challenge prerogative acts, it would later transform into an act ensuring the liberty of all England's subjects. The Habeas Corpus Act (1679) firmly entrenched the ideas mythically and abstractly set forth in the Magna Carta (1215) within English law. The Act ensured the right to a fair trial and the right to appeal against wrongful imprisonment. After the Act was passed by parliament, it was primarily used to guard against arbitrary state action against an individual. For example, *habeas corpus ad respondendum*, was issued when a man is confined by a process of an inferior court; *ad satisfaciendum*, was issued when a plaintiff wanted to bring his prisoner up to a superior court for execution; *ad prosequendum, testificandum, deliberandum, etc.*, was issued in order to move courts, possibly to move to the jurisdiction in which the crime was committed; and lastly, *ad faciendum et recipiendum*, was when a prisoner was sued in an inferior court and wished to be brought to a superior court.<sup>44</sup>

In 1758, the Attorney General Charles Pratt attempted to pass a Habeas Corpus Bill in parliament. The bill was created in order to rectify several issues with the 1679 act, including penalties for false imprisonment and determination of truth or falsity in the writs. Most importantly, however, was the issue of whether the writ of habeas corpus would be extended to noncriminal confinements.<sup>45</sup> On February 21, 1758, Pratt presented "An act for giving a more speedy remedy to the subject upon the writ of Habeas Corpus." The clause concerning the civil causes stated,

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<sup>43</sup> R.J. Sharpe, *The Law of Habeas Corpus* (Oxford: Clarendon Press, 1989), 4-5.

<sup>44</sup> William Blackstone and Wayne Morrison, *Blackstone's Commentaries on the laws of England in four volumes* (London: Routledge Cavendish, 2001), 102.

<sup>45</sup> Barbara Wilcie Kern, "The English High Judiciary and the Politics of the Habeas Corpus Bill of 1758" in *Law as culture, and culture as law* (Madison, Wisconsin: Madison House Publishers, 2000), 147-148.

... the awarding of writs of Habeas Corpus in cases of commitment or detainer for any criminal or supposed criminal matter, shall in like manner extend to all cases where any person not being committed or detained for any criminal or supposed criminal matter, shall be confined or restrained of his liberty or her liberty under any colour of pretence whatever...<sup>46</sup>

Pratt wanted to extend the use of habeas corpus to all circumstances of confinement.

In the same year that Pratt presented the bill to parliament, he published a pamphlet outlining the need for the bill. In *An inquiry into the nature and effect of the writ of Habeas Corpus, the great bulwark of British liberty, Both at Common Law, and under the Act*, Charles Pratt argued that habeas corpus was the right of every English man, and thus the 1679 act needed to be rectified so that every individual being held against his or her will, could attain it. He contended that the present bill needed to be passed because in present England “there is less likelihood of infringement of liberty by the crown, than by limited inferior jurisdictions, or private persons.”<sup>47</sup> While Pratt made a solid argument for the need for an amendment, in parliamentary debate, it was defeated by Lord Hardwicke, the Duke of Newcastle, and William Murray Lord Mansfield. Lord Mansfield opposed the bill arguing that

that people supported it from the groundless imagination that liberty was concerned in it, whereas it had as little to do with liberty as the Navigation Laws or the act for encouraging the cultivation of madder; that ignorance on subjects of this nature was extremely pardonable, since the knowledge of particular laws required a particular study of them; that the greatest genius, without such study, could no more become master of them than of Japanese literature without understanding the language of the country; and that the writ of *habeas corpus* at common law was a

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<sup>46</sup> W. Cobbett and J. Wright, eds. *The Parliamentary History of England from the Earliest to the Year 1803, 36 vols* (London: Printed for T. C. Hansard for Longman et al, 1806-1820), 15:871-74.

<sup>47</sup> Charles Pratt, *An inquiry into the nature and effect of the writ of Habeas Corpus, the great bulwark of British liberty, Both at Common Law, and under the Act* (London: Printed for C Henderson, 1758), 25.

sufficient remedy against all those abuses which this bill was supposed to rectify.<sup>48</sup>

While the bill did not pass in 1758, it would pass later in 1816, during a more liberal and reformist period. In 1758, Lord Mansfield's arguments against the bill, show that he felt it was unnecessary. He believed that the present state of the Habeas Corpus Act 1679, was liberal enough, and could be expanded to cases that were not merely criminal. Pratt's bill was therefore seen by jurists in the 1750s as unnecessary and did not pass. Pratt's views on law would have to wait until the Amendment of 1816.

What does this all mean for an analysis of the Somerset Case? As a writ of habeas corpus was used to bring James Somerset to court while he was being kept on a boat by John Knowles, it fell outside the usual use of habeas corpus in England. Here it shared something in common with the earlier case, also presided over by Lord Mansfield, *Lewis v Stapylton* (1770). Although it is impossible to prove that it was the only case that used habeas corpus for a private detainment, it was an original case, as it used habeas corpus to free a human being, an action that was not intended by the ambiguous Habeas Corpus Act of 1679. This perception is supported by the Amendment of 1816, in which parliament finally decided that habeas corpus could be used on cases that were not criminal. As the noted legal scholar R. J. Sharpe explains in *The Law of Habeas Corpus*, the Act of 1816 was most likely first created to encompass all situations where an individual was kept in detention, specifically, confinements that did not rest on a judicial determination or state order.<sup>49</sup> Moreover, the constitutional historian E. N. Williams has argued that there were two main weaknesses in the act that needed to be

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<sup>48</sup> Baron John Campbell Campbell, *The lives of the chief justices of England, volume 3* (New York: Cockcroft & Company, 1878), 354-355.

<sup>49</sup> R.J. Sharpe, *The Law of Habeas Corpus* (Oxford: Clarendon Press, 1989), 69.

rectified in the 1816 amendment, “the writ did not apply to cases other than detention on a criminal charge, and the courts had no power to examine the truth of the facts stated on the return to the writ by the goaler.”<sup>50</sup> Although it cannot be proven that the Somerset Case, and the *Lewis v Stapylton* case (1770), were the first occasions in which habeas corpus was used on a private confinement, the fact that a Habeas Corpus Bill was proposed by Pratt in 1758 and that parliament passed an amendment to the Habeas Corpus Act in 1816, supports the idea that employing *habeas corpus* for private confinements was not the original intent of the 1679 act.

The Somerset Case’s use of habeas corpus is original, and the question arises as to why Lord Mansfield accepted its use, and why he believed, as proven by his opinion against Pratt’s bill in 1758, that the Habeas Corpus Act included private confinements. As a learned man of the law, it is possible that Mansfield’s understanding of the concept of habeas corpus was influenced by the more liberal Scottish expectations of the right. While habeas corpus does not extend to Scotland as it does to the other parts of the British Empire, Scotland has its own version of the writ, entitled the ‘Wrongous Imprisonment’ Act 1701. Similar to habeas corpus and the Habeas Corpus Act 1679, it prohibits unlawful detention of a person. The Act declares,

And it is hereby declared that the above penalties shall not be modified by any power or authority whatsoever, and his majestie, with advice and consent forsaide, extends this act for preventing of wrongous imprisonment to the case of all confinements not either consented to by the party or inflicted after tryal by sentence.<sup>51</sup>

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<sup>50</sup> E.N. Williams, *The 18<sup>th</sup> Century Constitution Documents & Commentary* (London: Cambridge University Press, 1970), 385.

<sup>51</sup> The Records of the Parliaments of Scotland to 1707, K.M. Brown et al eds (St Andrews, 2007-2010), date accessed: 4 February 2010

The Wrongous Imprisonment Act proves to have more liberal wording, as it seemingly extends to all cases of confinement, not limited to criminal cases. The noted historian David Brion Davis stated in *The Problem of Slavery in the Age of Revolution 1770-1823* that the Scottish Act “was said to be far more favorable to liberty than the Habeas Corpus Act of England.”<sup>52</sup> A fine example to support this theory is that the *Knight v Wedderburn* case was brought to court on a wrongful imprisonment charge.

As well as taking heed of confinements that were not criminal nor imposed by the state, the Wrongous Imprisonment Act considered the case of individuals being transported away from Scotland. The Act stated that:

that no person be transported furth of this kingdom except with his own consent given before a judge or by legal sentence, certifying judges and magistrats and all others who shall give order otherways for the said transportation, as likeways all such who shall transport any person without a lawfull warrant from a judge or magistrat, that he shall be lyable to the foresaid pains of wrongful imprisonment, as also of being deprived and declared incapable of all public trust.<sup>53</sup>

This part of the law ensured that an individual, even a slave, could not be transported out of the kingdom against his own will. When applied to the courts, James Knight was freed and remained in Scotland.

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William II: Manuscript > 1700, 29 October, Edinburgh, Parliament > Parliamentary Register > Friday 31 January 1701

<sup>52</sup> David Brion Davis, *The Problem of Slavery in the Age of Revolution 1770-1823* (London: Cornell University Press, 1975), 488.

<sup>53</sup> The Records of the Parliaments of Scotland to 1707, K.M. Brown et al eds (St. Andrews, 2007-2010), date accessed: 4 February 2010

William II: Manuscript > 1700, 29 October, Edinburgh, Parliament > Parliamentary Register > Friday 31 January 1701

*Knight v Wedderburn* was called to trial by wrongous imprisonment, and the Somerset Case was brought to court on a writ of habeas corpus. As the Somerset Case was possibly the first time habeas corpus was used on private holdings, Lord Mansfield could have been influenced by the conception of habeas corpus from his Scottish legal knowledge and background. Furthermore, while the Somerset Case is thought of as influencing the entire Empire, in Scotland the law was already receptive for legal decisions concerning the status of slaves to exist. The Wrongous Imprisonment Act allowed for a more precise conception and legal articulation of liberty, which is evident in the decision of the Knight case. In the Scottish legal realm, slavery was considered inconsistent with the principles and laws of the land. Therefore, Scottish civil law offered the possibility of a decision more favourable to liberty than Mansfield's determination that slaves could not be forcibly carried out of England. What is striking and what has been overlooked by other historians is the fact that both decisions and their judges were influenced by habeas corpus. Moreover, the decisions were influential and groundbreaking as habeas corpus was used on Black slaves. Thereafter, Blacks were eligible to use the writ of habeas corpus, and on a greater level, the Law itself. As William M. Wiecek stated in *The Sources of AntiSlavery*, "The mere fact that habeas corpus was available to any black to test the legitimacy of his putative masters claim to him was in itself an extension of the scope of the Great Writ and a threat to the security of slavery in England."<sup>54</sup> The legal situation in mid-eighteenth century England and the growing influence of Scots and their legal expertise could have allowed for James

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<sup>54</sup> William M. Wiecek, *The Sources of Anti-Slavery Constitutionalism in American, 1760-1848* (London: Cornell University Press, 1977), 33.

Somerset to be freed on a writ of habeas corpus, with a better understanding of the more liberal Wrongous Imprisonment Act.

The integration of England and Scotland into a united Britain presented numerous options for cross-cultural and intellectual interaction and while the law was not the most obvious area where this was the case, it is clear that ideas about freedom and slavery did not remain trapped within exclusively English and Scottish legal communities. People (like Mansfield and Kames, or Smith, Hume, and Ferguson), political, social and economic ideas all circulated within Britain in the mid- to late-eighteenth century and as a result questions of abolition, slavery, and the law also heavily influenced questions of habeas corpus, natural rights, concepts of freedom and liberty and concepts of free trade too. These forces and ideas coalesced around the institution of slavery and the powerful questions of slave holding, abolition and emancipation. Somerset was important not only as a landmark legal case – ambiguous as it was – but also because it drew together discussions (inside and outside courts of Law) over enlightenment ideas of natural law, citizens and rights, over the mobilization of transatlantic abolitionists with the goal of eliminating the slave trade, and of moralists who sought use of the law to redress social and moral grievances. For those reasons above it is obvious why the Somerset decision attracted and continued to attract attention. The intellectual and legal developments throughout the eighteenth century in Scotland influenced the legal atmosphere in London, resulting in a more liberal conception of the rights of man and its position in the law.

## CONCLUSION

The Somerset Case came to court when many eighteenth-century developments were becoming contentious and a stimulus for change in the Empire. Legal and political reform and imperial debate ensured that the case would be important for the understanding of core English ideals such as property, slavery, liberty, humanity and natural rights. These issues coalesced in 1772 and provided the background against which Lord Mansfield reached his famous decision. Instead of contributing to the ongoing economic versus humanitarian debate in recent scholarship, this thesis has instead uncovered the genesis of these humanitarian sentiments, and shown how humanist arguments became useful and important in late-eighteenth century legal and abolitionist thought. By tracing the evolution of these social and legal developments, it is clear why the abolition movement emerged at this point in history. Popular political agitation, the proliferation of pamphlets, the circulation of ideas concerning the rights of man, and legal reformist argument throughout England and Scotland influenced the case and Mansfield's final decision. By considering the Somerset decision within its immediate social, political, and legal landscape, it is unmistakable that the case was a harbinger that abolition was to come in England.

The multiple slave cases of the late-seventeenth century through to the Somerset Case in 1772 illustrate how contradictory rulings created an unclear status of the law on slavery. The continuously conflicting legal decisions offered by judges ensured that the legality of slavery remained ambiguous and determined in the eye of the beholder. When the question of a slave's freedom was brought to court, both sides had precedent to rely on – predominantly the Yorke-Talbot Opinion and the three court cases presided

over by Lord Holt in the late-seventeenth and early-eighteenth centuries. As a result of these contradictory cases, both sides knew that the Court could rule in favour of either side, drawing on the precedent of choice. This legal situation ensured that the Somerset Case would become a pivotal decision, as planters and merchants became weary of bringing their slaves to London, and abolitionists wanted to establish lasting legal precedent ensuring the freedom of slaves in England, and eventually throughout the entire British Empire. Even before the case began, its publicity ensured that it was set up to be a categorical decision, either ensuring the masters' property of the slaves, or ensuring the freedom of all slaves in England.

With Mansfield's final decision, he ensured that a slave could not be forcibly removed from England. Although there are different versions of his ruling – found in Capel Lofft's reports, the *Scots Magazine*, the *Annual Register*, and a copy in Granville Sharp's manuscripts – there are a few facts that are agreed upon by virtually every existing account. Each account reported that Mansfield freed Somerset on the grounds that there was no law that existed, either through common practice or positive law, that made slavery legal in England. Capel Lofft's and the *Scots Magazine* versions both declared that Somerset must be discharged because there was no positive law that existed that ensured slavery. The popularity of these two accounts, and the fact they were well circulated following the case ensured that what people believed Mansfield said, became more important than what he actually said. The belief that Lord Mansfield, one of the most influential judges of the period, declared that slavery did not exist gave the abolitionist movement, still in its infancy, the spark it needed to push for parliamentary legislation outlawing the slave trade and slavery itself. By stating that

slavery was so odious that no law could support it, and saying that it could only be rectified by positive law, Mansfield ensured that abolitionists would have legal rhetoric to work with, as well as a precise location – Parliament – for the decision of abolition to take place.

Mansfield clarified his views in 1785 in the case *R v. Inhabitants of Thames Ditton*. Mansfield stated that the decision in the Somerset Case went no further than restricting the forcible removal of a slave from England. However, the fact that Mansfield never denied the reports created by Capel Lofft or other humanitarians, supported the popular understanding of the final ruling.

Sparked by the Somerset Case and the decision made by Mansfield, there was a proliferation of pamphlets authored by both abolitionists and pro-slavery enthusiasts. Inspired by the political manoeuvrings of John Wilkes and the SSBR in the 1760s, humanitarians appealed to the emotions of readers. Those writing about the need to end slavery relied on the horrors of the slave trade by recounting stories of the abuse and torture inflicted on slaves during middle passage and on the plantations. Conversely, planters and merchants wrote pamphlets relying on legal arguments, primarily that they had legal right to their property in slaves, and that their slave property was guaranteed by the sanction of the African slave trade by Parliament. Thus, slaves were not humans; they were chattel goods to be traded and purchased. If the government or courts were able to take away their property, then they could tamper with any other form of property in England. Furthermore, inspired by Mansfield's final decision, both sides of the debate urged parliament to create a law either sanctioning or prohibiting slavery in England.

Although the use of pamphlets, appealing to the emotions of readers was a tactic used before, it became more powerful in this period as the SSBR and the Wilkesite movement ensured that the middling sort could demand change. Relying on the ideas of freedom of speech and liberty, the Wilkesites urged people to demand their rights. Following the Wilkes scandals, there was a high level of debate on political and social reform in the late 1760s and early 1770s.

In addition to the movement of popular politics and the proliferation of pamphlets was the concept of 'human rights.' Though 'human rights' is considered a twentieth century term, and the way in which people in the eighteenth century understood it is quite different than modern understanding, there was undoubtedly a revolution in the concept of natural rights and the rights of man in the late-eighteenth century. Lynn Hunt has argued that people began to empathize with the human condition. The fact that other humans shared the same feelings as the reader (or viewer) of a horrific event came to affect individuals. The 'rights of man' became a common idea amongst enlightenment thinkers and, as a result, questions emerged concerning who was a man, and who was deserving of natural rights.

Growing concern for the human body and the growth in empathetic literature became two key stimuli for the abolition movement as newspaper accounts and the proliferation of pamphlets describing the plight of African slaves spread throughout Britain. As readers of these accounts began to empathize with slaves, the middling sorts seized upon their newly found position of power within society, giving them a powerful voice and a public arena to debate the merits of abolition with those who championed the slave trade.

Simultaneously, while legal cases were being contested concerning the legal existence of slavery and while concepts of liberty, 'human rights,' and natural rights were being discussed in pamphlets, these concepts were being debated throughout the Empire. Humanitarians in England, the Americas, Scotland, and Ireland became engrossed in the discussion, and each felt they had a right and responsibility to comment on the governing of the Empire. A cross-Atlantic abolition movement emerged, led by Granville Sharp and Anthony Benezet, and Scottish intellectuals spoke about the idea of natural rights and slavery throughout the eighteenth century. These ideas of empire were not limited to a humanitarian's own locale, but affected every corner of the Empire, as a subject such as slavery was central to the governance of the Empire. It touched upon the issues of sovereignty, jurisdiction and fiscal feasibility, which were important to each and every locale. With these eighteenth-century developments, a compelling voice emerged amongst these 'Enlightened' Britons. As a result, ideas of natural rights, slavery, liberty, law and society were themes that became intertwined in the minds of Hanoverian Britons. Decisions on the peripheries and at the centre of the Empire influenced all of these issues. For example, key London political and legal figures were often from Scotland, and Lord Mansfield proved that Scottish legal training could be influential in London Court rooms.

The strong and united voice of the Empire in the eighteenth century meant that the middling sort and members of society who did not own substantial quantities of property could finally voice their views on key legal and political issues. The fact that the British colonies also consisted of 'freeborn Britons' meant that persons living throughout the Empire would and could write on social, political and legal matter in

England and debate about how the Empire should be governed. Thus, an event like the Somerset Case was followed by people throughout the Empire through newspapers and pamphlets. A fine example and point of comparison is the contemporaneous legislation enacted in Portugal concerning slavery. Both Seymour Drescher's *Abolition: A History of Slavery and Antislavery*, and David Brion Davis' *The Problem of Slavery in Western Culture*, explain that in 1761, Portugal disallowed the importation of black slaves into Portugal, the Azores, and Madeira, declaring that any black slaves brought into the country would be emancipated. While this has been understood as a humanitarian act, slavery was not formally abolished and the Act was only put in place to quell the protests of free Portuguese labourers. Moreover, in 1773 a law was introduced that ensured freedom to any black slaves imported into Portugal, and it also denied the immigration of any free black labourers.<sup>1</sup> As Drescher argues, these laws were only enacted as an affirmation of slavery, confirming its existence and strength in the colonies. Drescher asserts that these laws were the equivalent of the Somerset Case's verdict in England, but that these laws were met with no public discussion.<sup>2</sup> This fact underlines the importance of the Empire to the Somerset Case. In Portugal, no public discussion ensued because they did not have the type of avenues of communication open to members in its colonies. In the British Empire, members of the colonies believed that they had a stake in the Empire and expressed an interest in its governance. As a result, events like the Somerset Case would be debated and discussed throughout the entire empire.

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<sup>1</sup> David Brion Davis, *The Problem of Slavery in Western Culture* (Ithaca, New York: Cornell University Press, 1966), 234.

<sup>2</sup> Seymour Drescher, *Abolition: A History of Slavery and Antislavery* (New York: Cambridge University Press, 2009), 104.

Many political, legal and social issues continued to attract attention or require redress throughout the Empire. Humanitarians from England, Scotland, Ireland and the Americas united in opposition to slavery and voiced their demands for abolition, as middling sort characters on both sides of the Ocean made their views clear and ensured that the Somerset Case would be a revolutionary case. Legal developments in Scotland, like the Wrongous Imprisonment Act, and the writings of many enlightened Scots influenced men like Lord Mansfield, ensuring that the decision to end slavery would not be taken lightly. Finally, using the techniques popularized and perfected by the Wilkesites, men like Granville Sharp, Anthony Benezet, Thomas Clarkson, and William Wilberforce challenged the institution of slavery.

Like many of their fellow reformist colleagues – those interested in social and political reform too – abolition was finally successful in 1833. It should come as no surprise that broader political and social reform (Factory Acts of the 1830s, Poor Law Amendment Act 1834, Great Reform Act of 1832, Catholic Emancipation) also came to fruition at the same time. It is precisely at this time that ‘natural rights’ came to be seen as human rights. Somerset and Mansfield, Adam Ferguson too, would have approved.

## Bibliography

### Manuscripts

Granville Sharp Papers. New York Historical Society (New York). Anthony Benezet. Letter to Granville Sharp. 29, March, 1773. Granville Sharp Letters to, on slavery 1768-1773.

Granville Sharp Papers. New York Historical Society (New York). Anthony Benezet to Granville Sharp. November 1772. Granville Sharp Letters to, on slavery 1768-1773.

Slavery Collection, 1709-1864. New York Historical Society (New York).

### Printed Primary Sources

Blackstone, William. *Blackstone's Commentaries on the laws of England in four volumes*, ed. Wayne Morrison, London: Routledge Cavendish, 2001 edition.

Bollan, William. *Britannia libera, or, A defence of the free state of man in England [microform] : against the claim of any man there as a slave inscribed and submitted to the jurisconsulti, and the free people of England*. London : Printed, and sold by J. Almon, 1772.

Burke, Edmund. *The annual register, or a view of the history, politics, and literature, for the year 1772*. London: J. Dodsley, 1772.

Campbell, Baron John Campbell. *The lives of the chief justices of England, volume 3*. (New York: Cockcroft & Company, 1878).

Candidus. *A letter to Philo Africanus, upon slavery; in answer to his of the 22d of November, in the General Evening Post*, 1788.

Clarkson, Thomas. *The History of the Rise, Progress, and Accomplishment of the Abolition of the African Slave-Trade by the British Parliament*. London: John W. Parker, West Strand, 1786.

Cobbett, W. and J. Wright, eds. *The Parliamentary History of England from the Earliest to the Year 1803, 36 vols*. London: Printed for T. C. Hansard for Longman et al, 1806-1820. 15:871-74.

Demarin, John Peter. *A Treatise Upon the Trade from Great-Britain to Africa*. London: R. Baldwin, 1772.

Douglass, Frederick. *The Life and Times of Frederick Douglass*. New York: Dover Publications, 1845.

Equiano, Olaudah. *The Interesting Narrative and Other Writings*. ed. by Vincent Carretta. London: Penguin Classics, 1995.

Estwick, Samuel. *Considerations on the negroe cause commonly so called, addressed to the Right Honourable Lord Mansfield*. London: J. Dodsley, 1773.

Estwick, Samuel. *Considerations on the negroe cause commonly so called, addressed to the Right Honourable Lord Mansfield*. London: J. Dodsley, 1788.

Ferguson, Adam. *An Essay on the History of Civil Society*. Edinburgh: A. Kinkaid & J. Bell, 1767.

Ferguson, Adam. *Institutes of Moral Philosophy*. Edinburgh: John Bell & William Creech, 1785.

Hargrave, Francis. *An Argument in the Case of James Somerset*. Boston: J. Russell, 1774.

Hoare, Prince. *Memoirs of Granville Sharp, Esq.* London: Henry Colbourn, New Burlington Street, 1828.

Howell, Thomas Bayly, and Thomas Jones Howell, William Cobbett, and David Jardine. *Cobbett's Complete Collection of State Trials and Proceedings for High Treason and Other Crimes and Misdemeanors*. London, 1824.

Howell, Thomas Bayly, and Thomas Jones Howell, William Cobbett, and David Jardine. *Cobbett's Complete Collection of State Trials and Proceedings for High Treason and Other Crimes and Misdemeanors*. London: R. Bagshaw, 1814.

Hume, David. *Essays and Treatises on Several Subjects*. Edinburgh: A. Kinkaid and A. Donaldson, 1758.

Lofft, Capel. *Reports of Cases Adjudged in the Court of King's Bench (1772-1774)*. Dublin: James Moore, 1790.

Long, Edward. *Candid reflections upon the judgement lately awarded by the Court of King's Bench: in Westminster Hall, on what is commonly called the negroe-cause, by a planter*. London, 1772.

Millar, John. *Observations Concerning the Distinction of Ranks in Society*. London: W. and J. Richardson, 1771.

Newton, John. *Thoughts Upon the African Slave Trade*. London: Printed for J.

Buckland; and J. Johnson, 1788.

Nisbet, Richard. *Slavery Not Forbidden by Scripture. Or, A Defence of the West-India Planters, from the Aspersions Thrown Out Against Them.* James Sparhawk, 1773.

Oldham, James. *Unpublished Legal Papers of Lord Mansfield.* Raleigh: University of North Carolina, 1986.

Pratt, Charles. *An inquiry into the nature and effect of the writ of Habeas Corpus, the great bulwark of British liberty, Both at Common Law, and under the Act.* London: Printed for C Henderson, 1758.

Rush, Benjamin. *An Address to the Inhabitants of the British Settlements in America, Upon Slave-Keeping; To which are added, observations on a pamphlet, entitled, "Slavery not forbidden by Scripture; or, A defence of the West-India planters."* Early American Imprints. First Series; No. 12994, 1773.

Sharp, Granville. *An Essay on Slavery.* Burlington, N.J.: Issac Collins, 1773.

Smith, Adam. *The Theory of Moral Sentiments.* Edinburgh: A. Kinkaid & J. Bell, 1759.

Thompson, Tho. *The African Slave Trade for Negro Slaves, shewn to be consistent with principles of humanity, and with the laws of revealed religion.* Canterbury, London, 1769.

Wallace, George. *A System of the Principles of the Law of Scotland.* Edinburgh: A. Millar, D. Wilson and T. Durham, 1760.

Wesley, John. *Thoughts Upon Slavery.* Early American Imprints. First Series; No. 13762, 1774.

### **Newspapers and Magazines**

*Gazetteer and New Daily Advertiser.* London, England. Wednesday, November 11, 1772; Issue 13634.

*General Evening Post.* London, England., Thursday, June 25, 1772; Issue 6039.

*Virginia Gazette.* Williamsburg, Virginia. August 27, 1772; Issue 1100.

Scots Magazine 1772 volume 34. Edinburgh. Printed by A. Murray and J. Cochran.

## **Legal Documents**

*Butts against Penny*. 83 ER: 518.

*Chamberline against Harvey*, 87 ER: 598

*Pearne against Lisle*, Amb. [77], 271 E.R: 47.

*Shanley v. Harvey*, March 15 1762, 2 Eden, 125, pp. 844-845.

*Smith versus Brown and Cooper*, 2 Salkeld. [666], 91 E.R: 566-567; 2 Ld. Raym. 1274: pp. 566

*Smith versus Gould*, 2 Salkeld. [667], 91 E.R: 567; 2 Ld. Raym. 1274, S. C.: pp. 567

The Records of the Parliaments of Scotland to 1707, K.M. Brown et al eds (St Andrews, 2007-2010), date accessed: 4 February 2010  
William II: Manuscript > 1700, 29 October, Edinburgh, Parliament > Parliamentary Register > Friday 31 January 1701

“The United States Constitution.” Article IV. Section 2. (1787).

## **Secondary Literature:**

### **Books and Articles**

Antsey, Roger. *The Atlantic Trade and British Abolition, 1760-1810*. London: Macmilan, 1975.

Arnstein, Willcox. *The Age of Aristocracy: 1688-1830*. New York: Houghton Mifflin Company, 2001.

Bayly, Christopher Alan. *Imperial Meridian: the British empire and the world, 1780-1830*. New York: Longman, 1989.

- Benton, Lauren A. *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900*. Cambridge: Cambridge University Press, 2002.
- Blackstone, William. *Commentaries on the Laws of England*. Oxford: Clarendon Press, 1765.
- Blumrosen, Alfred W, and Ruth G. Blumrosen. *Slave Nation: How Slavery United the Colonies and Sparked the American Revolution*. Illinois: Source Books Inc, 2005.
- Bradley, Patricia. *Slavery, Propaganda, and the American Revolution*. Mississippi: University Press of Mississippi, 1998.
- Brewer, John. *Party Ideology and Popular Politics at the Accession of George III*. Cambridge: Cambridge University Press, 1981.
- Brewer, John. *The Sinews of Power*. Cambridge, Massachusetts: Harvard University Press, 1988.
- Brewer, John and John Styles. *An Ungovernable People: The English and their law in the seventeenth and eighteenth centuries*. New Brunswick, NJ: Rutgers University Press, 1980.
- Brown, Christopher Leslie. *Moral Capital: Foundations of British Abolitionism*. Raleigh: University of North Carolina Press, 2006.
- Cairns, John W. "Rhetoric, Language, and Roman Law: Legal Education and Improvement in Eighteenth-Century Scotland." *Law and History Review* 9 (Spring, 1991): 31-58.
- Cairns, John W. and T. David Ferguson, "Legal Humanism in renaissance Scotland." *The Journal of Legal History* 11 (1990): 40-65.
- Carretta, Vincent. *Equiano, the African: biography of a self-made man*. Athens: University of Georgia Press, 2005.
- Christie, Ian R. *Wilkes, Wyvill, and Reform*. New York: Macmillan, 1963.
- Colley, Linda. *Britons: Forging the Nation 1707-1837*. New Haven, Connecticut: Yale University Press, 2009.
- Corfield, Penelope J. *Power and the Profession in Britain 1700-1850*. London: Routledge, 1995.
- Davis, David Brion. *The Problem of Slavery in the Age of Revolution 1770-1823*. London: Cornell University Press, 1975.

Davis, David Brion. *The Problem of Slavery in Western Culture*. Ithaca, New York: Cornell University Press, 1966.

Devereaux, Simon. "Recasting the Theatre of Execution." *Past and Present*, no 202 (February, 2009): 127-174.

Drescher, Seymour. *Abolition: A History of Slavery and Antislavery*. New York: Cambridge University Press, 2009.

Drescher, Seymour. *The Mighty Experiment*. Oxford: Oxford University Press, 2002.

Drescher, Seymour. *Capitalism and Antislavery: British mobilization in comparative perspective*. New York: Oxford University Press, 1986.

Fry, Michael. *The Dundas Despotism*. Edinburgh: John Donald, 2004.

Fryer, Peter. *Staying Power: The History of Black People in Britain*. London: Pluto Press, 1984.

Gatrell, V.A.C. *The Hanging Tree: Execution and the English People 1770-1868*. Oxford: Oxford University Press, 1996.

Gerzina, Gretchen Holbrook. *Black London: Life Before Emancipation*. New Brunswick, New Jersey: Rutgers University Press, 1997.

Goldworthy, Jeffrey. *The Sovereignty of Parliament*. Oxford: Oxford University Press, 1999.

Greene, Jack P. "Colonial History and National History: Reflections on a Continuing Problem." *The William and Mary Quarterly* 54, no. 2 (April 2007): 235-251.

Halliday, Paul D. "Holt, Sir John." *Oxford Dictionary of National Biography*. (2004-9)

Hay, Douglas and Paul Craven. "England, 1562-1875," in *Masters, Servants, and Magistrates in Britain and the Empire, 1562-1955*. Chapel Hill: University of North Carolina Press, 2004.

Herman, Arthur. *The Scottish Enlightenment The Scottish Invention of the Modern World*. London: Harper Collins, 2001.

Hochschild, Adam. *Bury the Chains: Prophets and Rebels in the Fight to Free an Empire's Slaves*. New York: Houghton Mifflin Company, 2005.

Hont, Istvan and Michael Ignatieff. *Wealth and Virtue*. Cambridge: Cambridge University Press, 1983.

Hulsebosch, Daniel J. "Nothing But Liberty: Somerset's Case and the British Empire." *Law and History Review* 24 (2006): pp. 547-557.

Hunt, Lynn. *Inventing Human Rights*. New York: W.W. Norton & Company, Inc, 2007.

Hunt, Lynn. "The Paradoxical Origins of Human Rights." in *Human Rights and Revolutions*, ed. by Jeffrey N. Wasserstrom et al. Plymouth: Rowman & Littlefield Publishers, 2007. pp. 3-16.

Jackson, Maurice. *Let This Voice Be Heard*. Philadelphia: University of Pennsylvania Press, 2009.

Jordan, Winthrop. *White Over Black: American Attitudes Toward the Negro, 1550-1812*. Chapel Hill: The University of North Carolina Press, 1968.

Kern, Barbara Wilcie. "The English High Judiciary and the Politics of the Habeas Corpus Bill of 1758." in *Law as culture, and culture as law*. Madison, Wisconsin: Madison House Publishers, 2000.

Klingberg, Frank J. *The Anti-Slavery Movement in England: A Study in English Humanitarianism*. California: Yale University Press, 1926.

Langford, Paul. *A polite and commercial people: England 1727-1783*. Oxford: Oxford University Press, 1989.

Langford, Paul. *Public Life and the Propertied Englishman 1689-1798*. Oxford: Clarendon Press, 1991.

Langford, Paul. *The Eighteenth Century, 1688-1815*. London: A. and C. Black, 1976.

Lieberman, David. *The Province of Legislation Determined: Legal Theory in Eighteenth-Century Britain*. Cambridge, C.V.P., 1989.

Lock, E.P. *Edmund Burke: 1748-1797*. New York: Oxford University Press, 2006.

Nash, Gary B. *The Unknown American Revolution: The Unruly Birth of Democracy and the Struggle to Create America*. New York: Viking Adult, 2005.

Marshall, P.J. *A Free though Conquering People*. Aldershot, Hampshire: Ashgate Publishing Ltd, 2003.

McGowen, Randall. "A Powerful Sympathy: Terror, the Prison, and Humanitarian Reform in Early Nineteenth-Century Britain." *Journal of British Studies* 25 (1986).

McGowan, Randall. "Body and Punishment in Eighteenth-Century England." *Journal of Modern History* 59 (1987): 651-679.

- McGowan, Randall. "Revisiting the Hanging Tree." *British Journal of Criminology* 40, no. 1 (2000): 1-3.
- Midgley, Clare. *Women Against Slavery: The British Campaign 1780-1870*. New York: Routledge, 1992.
- Montesquieu, Charles de Secondat. *The Spirit of the Laws volume 1*. Glasgow: D. Niven for J. Duncan & Son, 1793.
- Namier, Lewis Bernstein and John Brooke. *The House of Commons, 1754-1790: the history of Parliament, Volume I. Introductory Survey, Constituencies and Appendices*. London: HMSO, 1964.
- Nadelhaft, Jerome. "The Somerset Case and Slavery: Myth, Reality, and Repercussions." *The Journal of Negro History* 51, No. 3 (1966): pp. 193-208.
- Nash, Gary B. *The Unknown American Revolution: The Unruly Birth of Democracy and the Struggle to Create America*. New York: Viking Adult, 2005).
- Oldham, James. *English Common Law in the Age of Mansfield*. Chapel Hill: University of North Carolina Press, 2004.
- Oldham, James and William Murray Mansfield. *The Mansfield Manuscripts and the Growth of English Law in the Eighteenth Century*. Raleigh: University of North Carolina, 1992.
- Paley, Ruth. "Imperial Politics and the English Law: The Many Contexts of Somerset, Law and History Review." *Law and History Review* Vol. 24, No. 3 (Fall 2006): pp. 659-664.
- Paley, Ruth. "Law, Crime and English Society, 1660-1830." in *Law crime and English society*, ed. Norma Landau. New York: Cambridge University Press, 2002.
- Sharpe, R.J. *The Law of Habeas Corpus*. Oxford: Clarendon Press, 1989.
- Shyllon, Folarin O. *Black Slaves in Britain*. Oxford: Oxford University Press, 1974.
- Tannenbaum, Frank. *Slave and Citizen: The Negro in the Americas*. Los Angeles: University of California, 1947.
- Temperley, Howard. *British Anti-Slavery 1833-1870*. London: Longman, 1972.
- Thomas, P.D.G. "John Wilkes and the Freedom of the Press, 1771." *Bulletin of the Institute of Historical Research* 33 (1960): 86-98.

Thomas, Keith. *Man and the natural world: changing attitudes in England 1500-1800*, London : Allen Lane, 1983.

Van Cleve, George. "Mansfield's Decision: Toward Human Freedom." *Law and History Review* Vol. 24, No. 3 (Fall 2006): pp. 665-672.

Van Cleve, George. "Somerset's Case and Its Antecedents in Imperial Perspective." *Law and History Review* 24, No. 3 (Fall 2006): pp. 601-646.

Walvin, James. *Black Ivory: Slavery in the British Empire*. Oxford: Blackwell Publishers Ltd., 2001.

Walvin, James. *The Black Presence*. New York: Schocken Books Inc, 1972.

Whyte, Iain. *Scotland and the Abolition of Black Slavery, 1756-1838*. Edinburgh: Edinburgh University Press Ltd., 2007.

Wiecek, William M. "Somerset: Lord Mansfield and the Legitimacy of Slavery in the Anglo-American World," *The University of Chicago Law Review* 42, No. 1 (Autumn 1974): 86-146.

Wiecek, William M. *The Sources of Anti-Slavery Constitutionalism in American, 1760-1848*. London: Cornell University Press, 1977.

Willcox, William B. and Walter L. Arnstein, *The Age of Aristocracy*. New York: Houghton Mifflin Company, 2001.

Williams, E.N. *The 18<sup>th</sup> Century Constitution Documents & Commentary*. London: Cambridge University Press, 1970.

Williams, Eric. *Capitalism and Slavery*. Richmond: The William Byrd Press, 1944.

Wise, Steven M. *Though the Heavens May Fall*. Cambridge: Da Capo Press, 2005.