THE SURPRISING ROLE OF LEGAL TRADITIONS IN THE RISE OF ABOLITIONISM IN GREAT BRITAIN’S DEVELOPMENT

A thesis submitted in partial fulfillment of the requirements for the degree of Master of Arts

By

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ABSTRACT


The abolition of British slavery in the 19th century raises the question of how the British achieved antislavery against colonial opposition. While historical theories have focused on economic, political and religious factors, no account of abolition is complete without a thorough investigation of the history of evolving British legal traditions. This thesis analyzed a number of British homeland court cases and antislavery laws. English legal traditions established principles of freedom long before abolition in Britain, and then upheld them in respect to blacks on British soil in the 18th century. On the other hand, these traditions exposed a void in British homeland law on slavery that failed to provide any positive legal basis for freedom beyond its shores, forcing abolitionists into a long battle to build social and political pressures to create such positive laws. This was facilitated by a gradual expansion of Parliamentary authority to impose such antislavery laws.
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I. INTRODUCTION

The four chief evils of the world still exist: death, war, famine and disease. However, an even more pernicious evil, slavery, predates war. The United Nations still lists slavery as the world’s greatest evil and devotes much of its influence and rhetoric in working toward the eradication of all forms of slavery from the modern world, starting with its legal foundations.

In a world which had known the institutions of slavery since ancient times, how do we explain or understand the enormity of Britain’s achievement of being the first nation to effect the complete abolition of slavery in the first half of the 19\textsuperscript{th} century? It is clearly a complicated topic with many attempts at interpretation.

What makes Britain unique, or at least different enough from the other leading European states of the 17\textsuperscript{th} through 19\textsuperscript{th} centuries, such as France, Spain, and Portugal, to allow the British to be the first to arrive at abolition? Some of the reasons have to do with differences in the way the law was utilized and formulated by each of these states’ governments. The French had slave laws, the \textit{Code Noir} (The Black code: based on Louis XIV’s edict of 1685 modified with later decrees was used to police slavery in France till the French Revolution of 1789), that was recognized and enforced, with rare exceptions, by France’s court system. The Spanish developed a codified system of slavery laws that were enforceable throughout the Spanish empire, from homeland to colonies in the New
World. Portugal was similar to these two in the way it developed and implemented its laws of slavery, like many other countries with slavery. Britain, however, was different in all of these respects. The British did not have a formal constitution, but instead a hodgepodge of court precedents and Parliamentary acts that were collectively and figuratively bundled together into something vaguely acknowledged at times as a British “constitution.” The British laws on slavery had developed in a dichotomous fashion, with elaborate and detailed, and enforceable, slave laws and codes written by colonial governments, while the British homeland retained only antiquated and ill-defined slave laws from medieval times. By the late 18th century, despite the attempts by proslavery British interests to enact new slave laws and improve enforceability, the old slave laws of the British homeland had fallen into disuse, and were ripe for being formally discarded.

In short, the very nature of British common law, and the dichotomous treatment of slavery laws by its colonies in contrast to the homeland made the British state more ready than others for the development of abolitionism and antislavery by the end of the 18th century. At the same time, however, the British hesitated to act, fearful of the social and political upheavals in revolutionary France, which fitfully moved towards abolition. Many in the British governing class therefore linked abolition to dangerous revolutionary radicalism. However, such alarmist views eventually lost their force in the British homeland, opening a channel for the ultimate implementation of antislavery laws that would be extended to the entire British Empire by 1833. Since the United States inherited the British common law system in its judicial processes, along with many natural rights philosophies, there was in America a similar foundation for eventual abolition comparable to that in Britain.
Historians have worked hard to understand the development of antislavery in Britain, though they have not always agreed on the how to explain it. This thesis pursues an approach focused on the evolution of British law in respect to the status of slaves. Attention to the development of law offers insights into the unfolding of the abolitionist process. The Mansfield decisions and subsequent court cases in the 1770s and 1780s created the legal foundations of antislavery, but not the legal tools to carry it out, especially in the colonial periphery. As a sort of two-edged sword, English legal traditions established the principles of freedom long before abolition in Britain, and upheld them in respect to blacks on British soil in the 18th century. On the other hand, these traditions failed to provide any positive legal basis for freedom beyond its shores, forcing abolitionists into a long battle to build social and political pressures to create such positive laws. In this respect, abolition began and ended with the law. No account of abolition is complete without a thorough investigation of its history.

EXPLANATIONS OF ANTISLAVERY

The original school of historical analysis that followed British emancipation of slaves in 1834 was essentially moralistic, touting the virtuous nature of abolitionists in righting the wrongs of slavery by ending the institution. Biographers and historians of the post-abolition era hailed the most well-known abolitionists, such as Sharp, Ramsay and Wilberforce as liberators who forwarded the humanitarian virtues of the British middle and upper classes. This was bolstered by the petition support of the laboring classes. Historians did not try to determine the underlying forces of abolitionism. Later generations of historians regarded this approach as subjective, hagiographic and self-
congratulatory. Their corrective to this was, first, an economic theory of antislavery, followed by attacks on the economic theory using other perspectives and methods.

The revisionist school, led by Harvard-trained Trinidadian historian Eric Williams, claimed that inevitable economic decline of the slave trade and competition from the competing system of free labor capitalism was the underlying reason for abolition. Revisionists slammed humanitarian virtues as irrelevant to abolition. More recent scholars such as Anstey, Drescher, Davis, Craton, and Brown disputed Williams’s Marxist theory and focused instead on religious ideology, social class divisions, or grass roots politics. While post-revisionism did fully explain why British abolitionism was so slow to develop and why it required decades of campaigning to overcome proslavery policy. A more focused legal perspective offers additional advantages in explaining the abolitionist process. For instance, it can help explain the course and ultimate success of the abolitionist movement in Britain. Historians have often portrayed the key antagonists to British abolitionism as Caribbean planters and the key proponents as Quakers, Evangelists, or working class laborers. An additional legal perspective looks at the actors differently, as litigants in court cases seeking to obtain advantages in either proslavery interests or abolitionist interests.

Eric Williams, the originator of revisionism, asserted that the rise and fall of the British sugar economy, as seen from the perspective of capitalism, led to the rise and fall of British colonial slavery. This Marxist view of capitalist determinism regarded British slavery as tenable only so long as it supported profiteering from entrepreneurs who had economic interests in the sugar industry of Britain. As soon as that industry began to falter economically, British slavery failed to be essential to the British economy, allowing
it to slowly dissipate under the attack of abolitionism, a process that took several decades to become a *de facto* reality. For Williams, the economic decline of British slave products eventually forced slavery out of business. Williams regarded British claims of abolitionist morality to be a form of hypocrisy shielding the underlying reality of capitalist expediency:

Seen in historical perspective, it forms a part of that general picture of the harsh treatment of the underprivileged classes, the unsympathetic poor laws and severe feudal law, and the indifference with which the rising capitalist class was...sacrificing human life to deity of increased production.¹

As such, he did not regard political factors, religious ethics, or legal tradition to be relevant. For Williams, British law had no bearing whatsoever on abolitionism or its delays.² Williams’s critics would enlarge the range of possibilities to explain abolitionism from a more multi-factorial and non-economically dominant perspective.

Michael Craton believed the political factors behind abolitionism were strong reasons for abolition’s success, in addition to economic decline. In *The Sinews of Empire* (1974), Craton asserts that the West Indies proslavery interests conspired to influence Parliament sufficiently to defeat and forestall any attempts at abolition. “Throughout the age of the elder Pitt…the presence in Parliament itself of 50 to 60 MPs with West Indian or slave-trading affiliations was more than enough to ensure that their interests swayed

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²Ibid., 3-212.
debates and influenced the minister informally.⁴ Craton does not add that the early proslavery leanings of the House of Lords and the Royals were equally important factors.

Craton also asserts that in the latter years of the eighteenth century, the West Indies lobby group lost most of its parliamentary influence.⁴ Craton believes their loss of lobby power led to the eventual passage of the slave trade abolition law in 1807. Similar to the revisionists, Craton believes the eventual decline in the price of sugar on the world market had a detrimental political effect on plantations and plantation owners.⁵ In many ways, Craton and William share similar views of economic decline as the spark that galvanized abolition. Craton appears to echo Williams’s economic decline theory, in the sense that the weakening of the plantation lobby’s parliamentary clout by 1807 caused their opposition to the slave trade bill to fail. Craton’s view was essentially economic explanation, and therefore dependent on the advantages and disadvantages of an economic focus to explain a major event like emancipation. Among the disadvantages was its inability to account for legal and political trends that helped mold Britain into an antislavery empire.


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⁴Ibid., 246.
⁵Ibid., 268.
Quakers and Evangelicals) developed the ethics concept of benevolence to fuel abolitionism. As Anstey notes,

The relevance of theological developments to anti-slavery reform lay in the theological origins and religious dimension of the powerful idea of benevolence; in the reinforcement of belief in a providential order as a sanction on conduct; and in that important root of the idea of progress which consisted in the belief in revelation as progressive with the necessary corollary that the Christian was called to new commitment as he received new revelation.\(^6\)

To Anstey, religious progressivism via benevolence created a necessary, but not sufficient, condition for abolition, so that it was one of the originating forces of abolition. This view is supplemented by egalitarianism in Quaker philosophy.

For Anstey, the economic decline theory does not account for the success of abolitionism. Rather, abolitionism, a humanitarian project, stalled during the Napoleonic wars between England and France. The West Indies lobby delayed and frustrated one abolitionist legislative project after another for a considerable number of years, long after politics had shifted against them, but ultimately failed to prevent abolition. Great Britain’s national perception of the economic value of the West Indies to Britain’s Empire prevented passage of anti-slave bills. Anstey had no interest in the role of the British legal system in the fortunes of abolitionism. The main focus of Anstey’s view is a humanitarian explanation for antislavery. The advantage of this approach is the way it supplements economic views such as those of Williams and Craton. The disadvantage of

Anstey’s focus is that it does not synchronize well with economic or political trends that helped shape England toward an antislavery orientation.\textsuperscript{7}

David Brion Davis doubts the adequacy of “a simple dichotomy of ‘economic motives’ and ‘humanitarian ideals’” to explain the British trajectory of abolition.\textsuperscript{8} Instead, Davis approaches British antislavery from a legal perspective ramified by social, economic and political considerations. He approaches abolitionism as a legal phenomenon that reflects an earlier phase of antagonism between homeland and colonies with a final formulation of national law that guaranteed abolition for British slaves in the colonies (except for a few left out in the law, such as India). Instead of seeing abolition as an economic or humanitarian process, Davis sees it as essentially a legal battle that was eventually won by abolitionists, once their opponents had weakened sufficiently to lose their earlier grip over Parliament in the form of proslavery lobbying. Davis develops the idea of a permissive Parliament that is able to “contain” abolitionism “within the boundaries of the existing order” by allowing abolitionism to have a voice but not letting that voice result in legal change.\textsuperscript{9} This strategy of containment ultimately failed, despite the proslavery influence of the West Indian lobby because the proslavery lobby lacked, “constitutional protection against newer and more vigorous interests.”\textsuperscript{10}

\textsuperscript{7}Ibid., 1-456.

\textsuperscript{8}David Brion Davis, \textit{The Problem of Slavery in the Age of Revolution 1770-1823} (London: Cornell University Press, 1975), 85.

\textsuperscript{9}Ibid., 102.

\textsuperscript{10}Ibid., 103.
While the legalistic analysis of Davis is a distinctively ideological explanation, and helps draw together multiple elements that paralleled trends in the law, it does not clearly reflect the political mechanisms trending during the 19th century in Britain. Davis’ analysis looks first at Parliamentary laws and secondarily at court cases. The relationship between socioeconomics and British national law depends, for him, on the close association between elites supporting slavery and their ability to maintain parliamentary inertia with respect to critical defining areas in British slavery. The result of this is his recognition of a muddle of imprecise and inadequate legislation that does not really touch upon slavery issues for the empire as a whole. Second, Davis uses court cases to differentiate between what he sees as three different areas of intersecting and overlapping law, which are namely international law, British imperial law, and domestic labor law.

While noting both legislative and judicial trends, Davis differs from our approach in not relating the two in a developmental way to show how the tools of the judiciary cases were a necessary prelude to the later legislative defining acts. He also focuses more on the interplay between the three kinds of court cases as examples of a development of domestic ideology that turns Britain from a proslavery to an antislavery stance over the course of a century. In contrast, our analysis looks more at the relationship between mainly British homeland court cases, not as much the international ones or the strictly domestic labor ones, because the homeland cases were the actual proving ground for the development of new legal rights for black slaves such as legal standing and habeas corpus, whereas the other areas of law Davis discusses acted in a retrograde fashion to impede the eventual progress of British legislation which drew most heavily on the progress made in the homeland court cases. For example, Davis asserts that
“This would have conformed with the 1729 opinions of Yorke and Talbot, which were much respected by Lord Mansfield, and would also have prevented irrelevant debates on villeinage...however, for common-law courts, governed as they were by ancient writs and procedures, to separate property rights from questions of status and dominion.” \textsuperscript{11}

However, where Davis and we agree is that at the beginning of this progression is that British law, both legislative and judicial, was in a positive vacuum that essentially amounted to a type of lawlessness in the sense of so many areas that lacked legal definition and clarity. The effect this muddle had on the time sequence of abolition is not directly addressed by Davis, and it must be realized that Britain was the first major power to free the slaves, so that the issue of the slowing or tempo of the event is not comparable or relevant.

In addition, Davis’ analysis of court cases is fairly diffuse in its attempt to relate the three areas of law to domestic ideology, so that it does not provide a direct trajectory that feeds into the legislative cycle. Our approach, on the other hand, narrowly considers a select group of landmark court cases and shows how they were directly instrumental in providing necessary legal tools to assist blacks, not only, in winning new kinds of court cases in which slaves had legal standing, but in predisposing an evolving Parliament to greater sensitivity to the growing popularity for abolitionism that had increasingly taken hold in the homeland during the latter decades of the 18\textsuperscript{th} century.

While Davis’ point of view converges toward Craton’s idea of a progressively ineffectual West Indies lobby in Parliament, the dynamics involved are much more legalistic for Davis. He focuses on the key role played by conflicting jurisdictional authority in the British legal system. For instance, there were numerous examples of

\textsuperscript{11}Ibid., 480.
positive laws reinforcing the institution of slavery in the colonies, and the exact opposite, a zone of absence of relevant law, acting to in the British homeland. This dichotomy between positive and absent laws came to a head with the American Revolution, but in terms of British legal authority, parallel expressions occurred in the Jamaican House of Assembly’s resolutions of 1807 in which that colonial legislative body “asserted its exclusive and absolute right to make all laws for the internal governing of the island.”

This clash of internal jurisdictions and external legislatures, for Davis, explains why British abolition had such a long and thorny path. Davis refers to this clash as a “controversy [that] continued over the precise limits of governmental jurisdiction,” a controversy with international implications since it affected not only Britain but also those nations with similar jurisprudence principles such as France and the newly formed United States.

Within this larger legal analysis, Davis suggests that the groundbreaking *Somerset* court decision of 1772 exposed the conflict between competing kinds of jurisdiction and laws. Davis views *Somerset* as going beyond personal civil suit situations:

The earlier judicial cases concerning Negroes had little to do with the law of nations, maritime law, or even the legality of slavery in England. Rather, they involved civil disputes over the ownership of individual slaves…the specific issue raised by such actions was whether the English laws protecting personal property could be extended to protect the owners of errant slaves.

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12Ibid., 118.
13Ibid., 149.
14Ibid., 477.
Davis asserts that the importance of *Somerset* lay in the effect it had on later British cases: That British judges determined whether the common law of England was to apply, or the laws that controlled maritime relations between the nations. Because black slaves imported from Africa were not originally British natives, in Davis’s view, the arguments about the British roots underlying *villeinage* led to a conflict of the laws which culminated in *Somerset*. For Davis, “…the contradiction between an alien form of commercial property and common-law-traditions of domestic liberty” were at issue because “…there were no rules for regulating the subjects of a labor system totally foreign to the path of English development.”

One of the things lacking in Davis’ legalistic analysis of court cases is a consideration of the progression in jurisdictional authority. While he notes differences between colonial and homeland treatment with perceptions of slavery and slave laws, as well as the jurisdictional gulf between the two geographic areas, his analysis lacks a time perspective to show how England’s parliamentary authority needed to develop once the tools were in place, to extend its antislavery jurisdiction from homeland to maritime waters to colonies. The reason that the history of legal development is critical is because it provided an explanation for why England as an empire changed from initially permissive slavery to a dichotomous jurisdiction, where only the homeland was antislavery, to a final expanded version where the entire empire was antislavery. As the legal environment of court cases first and parliamentary law second, changed in favor of antislavery, so did the jurisdictional authority of Parliament over the empire showing that these two events were fundamentally linked. This process was not immediate but

15*ibid.*, 478.
required many years, essentially from the latter half of the 18\textsuperscript{th} century to nearly the middle of the 19\textsuperscript{th} century, to mature.

At this time in British history, two separate legal issues were at stake. In many court cases, jurists tried to clarify the distinction between rights of ownership in property and the rights of dominion.\textsuperscript{16} \textit{Somerset} was about dominion (the right of control of an object such as people or property), not property rights.\textsuperscript{17} Although metropolitans and colonials disputed the scope of the \textit{Somerset} decision, the abolitionists maintained that “…the only slavery that could be legal in England was that which had long been extinct.”\textsuperscript{18}

The court cases noted as critical by Davis did not solve the issue of jurisdictional conflict of laws, nor did they facilitate the slowly evolving actualization of Parliamentary supremacy. This was mainly because these court cases failed at the enforcement of non-Parliamentary, court-made, and metropolitan common law in the colonial periphery, including the West Indies. At this time, there was neither broad based acceptance nor an established system for that kind of enforcement or systematization of the laws. Britain did not even have a formal constitution, but its constitutional component was an amorphous collection of its laws, judicial and legislative, considered as a hodge-podge gestalt. Davis also implies that the colonial lobbyists (led by the West Indies group), as well as many Members of Parliament in the Commons, the Lords, the Privy Council, and most of the

\textsuperscript{16}Ibid., 480.

\textsuperscript{17}Ibid., 480.

\textsuperscript{18}Ibid., 483.
Royals endorsed a stunted imperial trajectory of constitutionalism, at the expense of uniform jurisdictional reach from central government in London to the colonies.

Attempting to integrate multiple prior views into one paradigm that accepts the power of ideology glossed over by some of his predecessors, Seymour Drescher’s *Capitalism and Antislavery* (1986) asserts that the forces of industrial capitalism and public opinion made British abolitionism succeed:

The disparity between metropolitan and colonial norms made the wrongs of Africa seem more nearly the negation of all rights than any other abuse in the empire. The extremity of slavery helped to sharpen the meaning of human rights in a way which a less multiform deviation could not have done.  

Antislavery first succeeded during a period when there was minimal suffrage. Abolition had to rely on appealing to the imagination of the masses to create public opinion, something unheard of in Britain or on the European continent before this time, as a political leverage force against the powers that opposed abolition. Drescher finds this much more important than the role of the British legal system. Drescher asserts:

To do this in an age before mass suffrage, the abolitionists had to establish themselves as a structure of opinion, with a weight so unequivocal and so persistent that emancipation came to seem natural, inevitable and irreversible long before its denouement.

For Drescher, before abolitionism, legally sanctioned form of public opinion did not exist. The ultra-reactionary British government viewed public expressions of opinion with a great deal of suspicion, exacerbated by fears of sedition and revolution that were inflamed by the British view of revolutionary events occurring in France. For Drescher,

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20*ibid.*, 166.
the government expected the public to follow a narrow and limited role tolerant of slavery. A new imaginative discourse using public opinion and mass petitioning embraced the relatively new, liberal ideology that slavery was wrong. For the masses, to create a political effect in an age without suffrage, they had to be vocal via petitions; in order to counter vested elite interests in Parliamentary voting. The focus by Drescher on antislavery as essentially a popular movement, the first such popular movement in Britain’s history, has the advantage of explaining the new involvement of the British middle and working classes. At the same time, it has the disadvantage of drawing attention away from the economic, political, ideological, and legal conditions that underpin the evolution of British thought toward a stance more favorable to emancipation.

Drescher’s take on Somerset as an epochal court case in the trajectory of abolition makes it plain that he regards Mansfield’s decision as an extremely limited one, which had only to do with forcible deportation and habeas corpus holding of a slave prior to deportation. However, in his opinion, the Somerset decision had a much broader effect than Mansfield’s narrow decision in that it effectively ended homeland claims to black slave services while the law on the subject remained silent. While this gave homeland slavery a de facto resolution, it kept the issue open for legislative action to later effectively end.

Christopher Brown’s *Moral Capital* (2006) also focuses on the rise of public opinion, similar to Drescher. British abolitionism had to create “moral capital” that the

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abolitionists could cash in for being believed or followed on any of their other projects.
The main reason Brown uses the term “moral capital” is to distinguish the moral or human rights side of the equation from the economic or capital side.

As to the reason for an antislavery shift in public national mood, Brown, like Drescher, prefers ideology to economy. “To a people that wished to think of themselves as Christian, moral, and free, the abolitionists presented an opportunity to express their reverence for “liberty, justice, and humanity,” and at little cost to themselves.”22 This point is important for Brown, in contrast to Drescher, Davis, and others because it centralizes the humanitarian aspects of British culture in the abolitionist motivational scheme and totally detaches any role for economics. This making it the exact opposite of Williams’ original economic revisionism and in a sense returning back to earlier historian perspectives related to British cultural imperatives as a driving force in abolition.

Brown does not focus on the role of British law in effecting abolition, which suggests he sees legal phenomena as the effect rather than the cause of underlying forces behind the eventual success of British abolition. Brown’s approach, which reinforces a form of self-interested ideology under the emblem of “moral capital,” has the same kind of advantages and disadvantages as Davis’ legalistic ideological approach. For example, “the decisive Somerset case of 1772 gave particular attention to social consequences of slavery,…Delphic verdict laced with ambiguities…”23 While it brings in a new focus

22Ibid., 450.

related to ideological concepts, it does not utilize the economic and political events that help explain Britain’s move away from a proslavery stance.

The various historians have therefore given the subject of British abolition a wide ranging set of analytical viewpoints and come up with a number of perspectives, but this only increases the ambiguities in explaining the course of British abolition and emancipation. It is useful to review the trajectory of British court decisions and legislative acts in order to arrive at a clearer understanding of this process. With the study of legal history, a new explanation of the course of antislavery, complementary to other past analyses, is possible by viewing the law as first an ambiguous vacuum of opportunity for both proslavery and antislavery advocates; as epitomized by Somerset (1777). This case allowed the abolition movement to develop, as a proslavery legal tradition was not fully established in British homeland law, and push in the direction of greater clarity of Parliamentary law, while at the same time Parliament was expanding its imperial jurisdictional authority. Both of these were linked and parallel processes feeding off each other.
II. AN OVERVIEW OF THE ROLE OF LEGAL TRADITIONS IN BRITISH ABOLITION

Britain was, but one of many European nations that struggled with the concept of abolition. In the case of earlier New World arrivals such as Portugal, Spain, and later ones such as the Dutch and French, different approaches to black slavery were reflected in the laws and actions of the nations over the course of the 16th through 19th centuries. There were separate, but in some ways parallel legal traditions undergoing transformation in these various European states, working out the course of slavery in several different ways. British abolitionism diverged for a period from the others as it became the earliest European nation to make statements on abolition in the form of its institutional expressions, mainly the court cases and legislative acts that emanated from the homeland of the British Empire.

A more detailed analysis of the evolving jurisdictional reach of British laws is one possible approach to explain the ups and downs of British abolitionism. Before 1807, there were few British laws limiting or outlawing slavery, if court cases such as *Somerset* were not included. The court cases limiting slavery were few and limited mainly to the cases preceding, including and following *Somerset* (1772). Instead of laws, the most frequent form of resolution of problems in individual master-slave relationships consisted of self-help options or lawsuits to gain compensation for the loss of a slave’s worth. In this kind of free for all, chaotic context, the British government essentially took no presiding role in advancing the rights of slaves. The 1807 Parliamentary anti-slave trade
bill and the 1833 Parliamentary abolition bill are two major legislative examples of a complex, multifaceted legal process. Britain had a heterogeneous, non-uniform legal tradition, particularly in respect to colonial possessions. This fact had great influence not only on what form abolition took, but how abolition came about.

By contrast, early and mid-nineteenth century Britain, while expanding as an empire, had a gradual homogenization of legal application that projected the uniformity and reach of its laws much more evenly among the colonial periphery. The British homeland fostered a complex maze of local jurisdictions ruled over by a combination of judicial common law, executive layers of power from local mayor to royal ruler of realm, and an initially weak but increasingly effective Parliament. Legal homogenization occurred in the form of court cases that set precedents about the treatment of slaves and placed limits on the ability of masters to deport them out of the homeland.

Other court precedents newly defined and expanded rights of slaves in the courtroom setting, such as *habeas corpus* (legal standing pertaining to rights of citizens) to slaves awaiting trial. The nullification by court precedents [court rulings of *Lowe v Elton* (1677) and *Gelly v Cleve* (1694)] excluding baptism as a route to freedom is yet another example of this process. The concept of freedom achieved by stepping foot ashore, the British homeland, was another point of contention that eventually proved to be a focus for the expansion of slave rights.

The British imperium oversaw a hodge-podge of more than two dozen far-flung overseas possessions, with highly variable degrees of autonomy and economic aspirations. The heterogeneity of British laws was nowhere more evident than the
multiplicity of different laws regarding slaves that proliferated in the colonies, in contrast to the scarcity of such laws in the homeland. Each colony that operated with some degree of autonomy from the British homeland had its own particular set of colonial laws about the rights of slave-owners and the obligations or penalties that could be imposed on slaves for breaking colonial laws, such as running away or resisting a master’s will.

However, courtroom decisions began a process of homogenization in which the homeland, at least, was able to define in a more uniform manner the exact limit of slave-owners’ rights and expand the rights of slave in the courtroom. In the process of expanding these rights, during court decisions, the British legal system was creating a baseline for uniformity in the application of imperial law at the same time.

During the same period, the ability of the law to serve as an instrument of feedback and democratic facilitator of popular will, instead of a fortress for the entrenched aristocratic, or royal prerogatives, grew steadily in importance. However, this kind of jurisdictional progression in reach from center to periphery spread very slowly and unevenly, which helps explain the equally slow and uneven progress of abolitionism.

The number of competitive seafaring nations relying on maritime law and the cultural pressures introduced by their legal heritages on the continental mainland also interacted with British legal culture. For example, France not only had a slave code, the Code Noir, to regulate relations between slave and master, but used the court system as a buffer to keep the number of slave related petitions for freedom to a manageable minimum. Spain had adapted its medieval legalistic traditions of slavery, inherited largely from the slave traditions of ancient Rome, to the New World, instituting a form of
New World slavery that was able to incorporate groups of people, such as Native Americans, who had never before been exposed to European slavery models. The Dutch modeled their forms of new slavery in ways that echoed those of Spain and France.

On the contrary, Britain, as a growing global empire, hosted not one, but many legal mechanisms, sometimes overlapping in authority, sometimes ambiguous in what was perceived to be their jurisdiction. The legalistic analysis of Davis notes several effects: the diversity of British laws created, including an attempt at narrow circumscription of judicial case law within the boundaries established by Parliament, to contain the conflicts that could arise due to the “jurisdiction of common-law courts [that] had steadily encroached upon the domain of the Court of Admiralty.”

There was an essential dichotomy, between the concept and legal treatment of slavery, in England and on the European continent. The Roman slave codes from which Europe derived its modern and New World adaptations of slavery were part of a long tradition of slavery inherited from before the Middle Ages and were thus less open to argument or change. Britain, however, had largely escaped many of the pressures of conformity that Rome was able to impose on her continental dominions, and many British legal traditions had relevance and scope well outside the range of Roman concepts, being anchored instead in the traditions of the native English people with an overlay of Norman concepts.

As a result, British law developed in a different direction than Romanized continental European law, including its treatment of slavery issues. The different flavor

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Davis, Problem of Slavery in, 478.
of English slavery was one in which it was never a fixed idea or strong legal construct in Britain, but always a wavering banner of thought. Underlying all of this, a vague and amorphous constellation of precedential laws and court rulings going back to antiquity, conceptually framed a “constitution” for the British people. This constitution was not only vague, but was never actually defined in a document form, making it a truly evolutionary legal instrument for change in many areas, including the treatment of slaves.

In addition, to the seventeenth century concept of Parliamentary supremacy, Privy Council decisions, and the Monarch often led or supplemented British national legislative decisions and expected the British citizenry to follow suit. As the court cases of the 18th and 19th centuries provided some guidance in the arena of slave rights, Parliament gradually came to cement these gains in the form of national legislation, first to prohibit the slave trade and ultimately to outlaw slavery itself.

Despite homeland constructs of antislavery, the colonies persisted in autonomous legal behavior that simply retrenched slavery into more of a stronghold than ever outside the auspices of homeland control. Colonial versions of this legalization of the self-help concept often trumped imperial advisement and law during this period, especially in the handling and fate of slaves. Regarding the appearance of slavery in the colonies prior to the establishment of positive law, Davis asserts, “In the Caribbean, Virginia, Maryland, and the Middle Colonies, for example, the law had come after the fact [of black slavery], giving validation by gradual regulation.”25 The gradual onset of national regulation came after a period of a void in guidance by the government in the handling of slaves. There

25Ibid., 473.
was thus a positive void in the law that was not to fill itself in for many years, starting in
1807. However, the Royals and Privy Council, once the process began, helped
 consolidate government opinion by leading Parliament toward the emancipatory laws.

Rather than influencing British laws on slavery, the effect of the European
continent was essentially null, thereby casting Europe more in the role of follower than
leader. European law arose from Roman codes of law. As such, guiding principles such
as those of Aristotle were strongly influential. On the contrary, British law from the 17th
century onward was led ever more forcefully by natural reason logic such as that
employed by Locke in his Treatises to prove the universality of human rights. However,
the colonies, using Locke’s works, chose to restrict natural reason to serve the needs only
of the white male population of the British Empire and as a reinforcement of material
prosperity of colonial entrepreneurs.

In short, international law prior to British abolitionism did not alter or lead Europe
in its slaveholding practices. British court cases helped forge the kind of consensus within
the homeland and in combination with growing jurisdictional effectiveness of the
homeland over the colonies that led the way for all of Europe in abolition. An analysis of
British court decisions helps chart the trajectory of British thought on abolition that was
to be later reflected in Parliamentary law. While the ultimate laws on British abolition, in
1807 and 1833, were legal consummations of abolitionism, they do not explain the basis
of legal thought that led to them. It is first necessary to study the court decisions prior to
the landmark Somerset case, as a backdrop to the effect of this court decision on the
template for antislavery that was to develop later.
III. COURT DECISIONS

HISTORICAL OVERVIEW OF COURT DECISIONS

The pre-Somerset British metropolitan court cases present varying themes and outcomes, sometimes favorable to slave owners, and sometimes not. By establishing legal precedents, these decisions shaped and molded subsequent court cases and behavior by slave owners and slaves outside the courtroom. On this basis, the early court decisions formed a distinct subset of proslavery findings, in contrast to later cases in the latter part of the 18th century and beyond. Due to trends, the cases represent three distinct pre-Somerset eras or phases in homeland opinion: They can be divided into 1) the cases before the time of Lord Chief Justice Holt (1500 to 1700), 2) the Holt decisions (1700 to 1710), and 3) the influential Yorke-Talbot opinion of 1729 (which was not an actual court case) with its mention in a court case in 1749.

In medieval English law (laws starting round the time of William the Conqueror), the medieval climate of England was conducive to a particular form of English slavery called “villeinage.” Villeinage (a form of English hereditary serfdom/slavery of those captured in battle from Norman times, that replaced original chattel slavery of the British Isles as well as Anglo-Saxon imported systems utilizing Roman Laws on slavery) differed from slavery in other lands by the limited rights of the serf/slave, who could be commanded but not necessarily legally sold or deported. Judicial cases in the 17th century display near-uniformity of proslavery decisions. Early on, British citizens, both in homeland and periphery often preferred to resort to private, non-judicial means of resolving disputes rather than bringing them to court. This situation changed when court
cases began to be more respected and noticed by the media and populace as well as the ruling classes. Because of this change, the foundations for antislavery were established.

The British saw their court system as the last resort of disputants when other means had failed. Slave owners, aided by strong arm hirelings, would try to recapture and ship out their escaped slaves. The slaves, for their part, would try to run away and not be recaptured. In this they were assisted at times by free black communities such as existed in small amounts in England at the time. Slaves brought to England often sought escape from their owners. Occasionally, recaptured slaves sought freedom or wages for labor. Colonial laws attempted to control the problem of runaway slaves. “Wherever black slavery existed, the planters and their political allies ensured that local laws made specific and severe provisions against slaves running away.”

But, there was a huge dichotomy between the laws created by the colonies to govern the legal response to runaway slaves and the lack of laws on this subject in the metropole.

As a sort of two-edged sword, English legal traditions upheld the principles of freedom in Britain, but on the other hand failed to provide any positive legal basis for freedom beyond its shores, forcing abolitionists into a long battle to build social and political pressures to create such positive laws. Individual attempts to challenge slavery both in Britain and its peripheral colonies, until the 1770s, usually failed. These took the form of civil suits in judicial courts in which a black slave attempted to gain freedom from a slaveholder. However, many considered slaves in the British homeland, consistent with British maritime laws, to be chattel with no civil rights, unable to testify, and unable

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to challenge by a writ of *habeas corpus*. Most of these latter cases, however, had to do with “personal dominion” of the master over the slave.\(^{27}\)

While law in the colonies differed in a few particulars, the colonies and the homeland prior to 1770s were essentially uniform in denying judicial rights to slaves and did not acknowledge them as having standing to be litigants in a courtroom. Yet, there was a difference between the non-autonomous Crown colonies and the larger, more autonomous, self-governing colonies such as in the West Indies:

The West Indian legislatures had always conceded Parliament’s right to regulate imperial trade, but had insisted on their own constitutional jurisdiction over internal affairs. The crown colonies, however, could not appeal to such arguments.\(^{28}\)

It is logical to assume that the more dependent, tinier colonies under the influence of the homeland were less likely to create autonomous slave laws or resist the trends of the homeland, while their larger sister colonies had no such restraints. As such, a minor dichotomy between small colonies resembling the homeland and larger ones that were distinctively different began to emerge in the empire during the end of the 18\(^{th}\) century. This would have the effect of accelerating the process of abolition.

In a case not named but referenced during the legal brief for the case of *Pirate v. Dalby (1786)*, a black slave on British soil would be considered free, but a black slave properly bought in Virginia would be a slave in Virginia.\(^{29}\) This outcome also helped to establish a kind of jurisdictional divide between how effectively laws on or against

\(^{27}\)Davis, *Problem of Slavery in*, 478.

\(^{28}\)Ibid., 160.

slavery could be enforced in the periphery vs. the metropole. The jurisdictional divide was one in which the colonies retrenched in slave holding decisions including their legislative acts, while the homeland continued a long course toward abolition.

However, the most important point in these cases was the lack of a uniformly applicable British law that could be used interchangeably between homeland and periphery. In the case noted above, there was mention of both periphery and homeland, but the main force of the decision had to do with the well-established slave law in Virginia. The need to make a distinction between peripheral law and homeland law points out the absence of interchangeability. This was a token of the ineffectiveness of British jurisdictional authority over the colonies, part of a much more generalized phenomenon of the legalistic side of an early form of moral particularism then existing. As would be typical of such court cases, the opinion of the masses counted for nothing, either before or after the cases, which were decided by an elite group of justices whose backgrounds and sentiments placed them squarely in the ranks of the proslavery upper classes then dominant and nearly universal among the powerful societal groups living in the homeland. The end result of this influence from social classes on the justice system was a kind of entropic inertia which favored no change over change. This made it particularly difficult for the kind of change needed to lay the groundwork for abolition.

There were several common factors of these early British mainland legal cases or civil suits. First, these cases were very few in number, far outweighed by the vast number of self-help actions going on daily in the lives of the slave and the free on the homeland and in the periphery. Second, the geographic distance of the case from the British homeland was a key feature, establishing a weakening of British homeland jurisdictional
authority almost in proportion to the distance from the homeland. Third, British culture took the fact of slavery for granted as a legitimated societal role that applied to blacks, something the *Somerset* case in 1772 would later challenge. Fourth, British culture entertained no special concern or consideration for the rights of a slave as a human being, a lack of natural law applicability that was to later become a cornerstone of the work of abolitionist Granville Sharp in his court interactions. At this early point, there were no tools yet established for the concept of abolition to progress.

In these early freedom law suits, black slaves frequently lost. Suits based on claims that the black slave had converted to Christianity and been baptized almost always lost. One of the features of these suits was the lack of rights or personhood for the black slave. He or she was regarded as property without the kind of rights a litigant in court might assume under English law if he or she were free. This was considered true even if the slave had been baptized. However, as Seymour Drescher asserts,

> In England…the metropolitan core kept slavery at a distance by turning a blind common law eye toward the institution. The English government fully acknowledged property rights in persons on the Atlantic and the piecemeal construction of slave laws in each of their colonies. It avoided creating an imperial black code in the manner of the monarchs of Spain, Portugal, and France. 30

As Drescher implies, this was something different than had occurred on the continent of Europe where slave codes were dominant. The dichotomy for England rested on the geography of that of the periphery vs. homeland, rather than a unifying concept as in the European continent.

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This led to a series of freedom suits in the early 1700s heard by Chief Justice Holt. As the eighteenth century progressed, the public opinion factor in the homeland began to operate to the disadvantage of proslavery interests and slave owners, but only within the homeland itself, not in the colonies. This would eventually lead to growing dichotomies between not only the content of slave related laws in the colonies (and their conspicuous absence in metropole legislature), but also court opinions in the colonies vs. the homeland. The role served by these dichotomies would be to help establish a basis for antislavery on the homeland while allowing it to not be established in the periphery, leading to a strengthening of the homeland tendency until more secure forms of antislavery expression such as legislative acts could be achieved. A better understanding of British court decisions requires a review of their different periods, starting with the earliest phase in the late 17th century.

**PRE-SOMERSET COURT DECISIONS**

Most of the decisions prior to Lord Chief Justice Holt had unfavorable outcomes for slaves in England. *Cartwright (1564)* in which the court prevented a Russian slave brought to England from being punished publically by being whipped, was a notable exception; the court saw whipping as a form of excessively violent punishment because “England was too pure an Air for Slaves to breathe in.” Other than an awakening sense

31Ibid., 97.

of interest in citizen liberty and a powerful phrase for abolitionists’ cause centuries later, *Cartwright* did little to advance abolitionist ideas. On the other hand, it is pivotal because it prefigured the concept of jurisdictional diversity by pointing to the homeland as a different kind of legal climate for slaves. Before this point, there was really no distinction between Britain and the colonies in terms of the boundaries that defined and limited slavery. After *Cartwright*, the idea that slavery could have different limits in different jurisdictions began to take hold.

*Lilburne* (1637) seems more of a natural rights case than one related to slavery. The court accused John Lilburne, a book printer, of violating sedition laws and libel when he distributed books from Holland without government license. The case assumed national proportions when he refused to swear the Star Chamber oath (oath of telling the truth when questioned by the court) because the normal court process at that time required a sworn oath in order for a defendant to be properly found guilty and punished of a criminal charge, such as the one the government was accusing Lilburne of having committed. Lilburne’s novel and highly unconventional if not outright rebellious refusal to swear the courtroom oath foiled the court’s stratagem. The oath was used as a trap to allow the court to punish a defendant procedurally. It also resulted in his detention until an eventual change in government leadership, to one more sympathetic to Lilburne’s situation, led to his release from custody and the government’s acknowledgment that Lilburne had been in the right. As an advocate of the rights of freeborn Englishmen, Lilburne’s case created a bright line of rights entitlement to which, much later, black slaves might aspire through court battles. “…the sentence of the Star Chamber given against John Lilburne is illegal, and against the liberty of the subject; and also bloody,
cruel, wicked, barbarous and tyrannical.”\textsuperscript{33} \textit{Lilburne} presented no jurisdictional boundary line conflict, yet it provided a template for litigants in later cases to refer to when trying to enlarge the rights of a powerless group such as black slaves or black freemen. It was a pivotal case for the trajectory of abolitionism, however, in that it enormously influenced the British sensibility toward enlarging freedom rights of individuals.

Lesser known court cases also echoed some of these themes. The case of \textit{Butts v Penny} (1677) involved a slave owner’s right to use ten black slaves as equivalent to property values in a “trover” law suit (a law suit requesting a return of property taken by another).\textsuperscript{34} The slave owner won this case because the court held that the ten slaves had not been baptized as Christians, but were considered pagan heathens.\textsuperscript{35} The thought behind this ruling was the lack of Christian baptism status resulted in black slaves not having legal status as human beings, so they could be used in court as a form of property, thus effectively giving the slave owner generic property rights over the black slave in England.

A number of the lesser court cases, unfavorable to baptism as a reason for emancipation, added to the collective trend toward dichotomous geographical spaces for


slavery and freedom. Similar findings occurred in *Lowe v Elton* (1677) and *Gelly v Cleve* (1694). However, the rulings did not go in the counterfactual direction to state what effect Christian baptism might have on slave owner rights in England, specifically whether or not it could give black slaves legal rights of human beings and prevent their being treated as property by the slave owner.\(^{36}\) The main effect, during these years, of minor cases was to establish legitimacy for slavery in the colonies while creating a void of decision making in the homeland.

Lord Chief Justice Holt decided three important, but ambiguous homeland court decisions in the first decade of the eighteenth century, more than a half century before *Somerset*. In all three, slave holders attempted to use black slaves in England as legal property or chattel in order to satisfy civil suits for monetary damages claimed by a plaintiff (injured party) due to the loss of property to a defendant (injuring party). The question is at issue in *Chamberlain v Harvey* (1697), *Smith v Brown and Cooper* (1701), and, most famously, *Smith v Gould* (1706). This involved whether or not slave owners could monetarily count black slaves as chattel property having a pecuniary value in order to satisfy a “trover” claim. Holt’s decision, for all three cases was that “there could not be an action of trover in the case of a black slave, because the common law did not

recognize blacks as different to other people.”37 This parsing of the meaning of *trover* may have seemed trivial, but it was underlying the important idea of what limit was to be placed, if any, on the rights black slaves might have in the courtroom.

*Smith v Gould (1706)* was the most important case decided by Holt because he most clearly stated the concept and rationale for the idea that “*trover lies not for a negro; but Charta he must be liber homo.*”38 With these words, Holt established the legal idea that black slaves could not be treated the same as inanimate property, but had certain rights of treatment shared by all humans. Even so, Holt also denied slaves the most basic of rights, the right to not be held in prison by whim. By regarding *villeinage* as a characteristic of native Englishmen and regarding property ownership of black slaves as a municipal law related to the colonies, rather than a universal natural law, Holt effectively drew a sharp and controversial jurisdictional distinction between homeland and colonial laws on slavery. This would affect the reasoning and argumentation in many later court cases leading up to *Somerset (1772)* and beyond. Just as importantly, his reasoning reflected a huge gap between the perception of homeland and colonial jurisdictional laws and raised implicit questions about the jurisdictional divide between them.

Further, many considered Holt’s lack of distinction between black slaves and English whites in terms of natural rights to have separated out the right of *service* from the right of *property* ownership for slave owners toward blacks while in England,


contrary to the laws operating in the colonies, which gave both service and property rights to the slave owner without qualification.\textsuperscript{39} To Holt, the medieval right of service by a slave to a master, known as \textit{villeinage}, implicitly could exist for black slaves because English law did not specifically recognize black slaves as different from white English villeins (an early example of the effect of an absence of relevant positive law). He expressed this view in \textit{Smith v Brown and Cooper} (1701), “As soon as a negro comes into England, he becomes free, one may be a villain in England but not a slave.”\textsuperscript{40} However, since English villeins owed only service (were subject to dominion), but could not be legally dealt with as valued property by their masters, Holt assumed black slaves in England owed the same sort of service to their masters. This implied that a property right over black slaves might not be fully operative in England. But, this set of decisions by Holt seemed to conflict with the earlier decisions defeating black slaves’ freedom suits based on lack of baptism (or their heathenism), so it created an ambiguity in interpretation of the law. A legal void resulted, with challenges for judges. This kind of legal muddle would, years later, invite a tailwind of contending views to try to fill the void of negative English laws on the subject of slavery.

The English attorney general, Sir Philip Yorke, together with the English solicitor general, Charles Talbot, composed in 1729 an informal, but highly influential legal opinion, not based on any particular court case and having no legal standing, known


\textsuperscript{40} Smith v Brown and Cooper (1701) 91 \textit{English Reports (1378-1865)} 566 (K. B.) (eng.) http://home.heinonline.org/ (Accessed: 10/7/2013).
afterward as the *Yorke-Talbot* opinion. They wrote it in an attempt to resolve the conflict in court decisions between the pre-Holt (late seventeenth century) and Holt (early eighteenth century) eras. The gist of this opinion was that the arrival of a black slave at England (or Ireland) did not automatically confer freedom. “…a Slave, by coming from the West-Indies to Great Britain or Ireland, either with or without his Master, doth not become free, and that his Master’s Property, or Right in him, is not thereby determined or varied.” This preserved the slave owner’s property right as well as the right to transport the slave back to the colonies later. “…Baptism doth not bestow Freedom on him…” For the slaveholding interests, this kind of opinion was pure manna, as it supplied them with the strongest kind of arguments to maintain their prerogatives, as well as attempting to extinguish the dichotomy slowing gaining in general opinion between homeland and periphery. It represented a marginalization of the things abolitionists were most interested in establishing first in the homeland.

In 1749, in his subsequent role as Lord Chancellor Hardwicke, Yorke confirmed this opinion. However, it had no legal status and was usable only as a persuasive (non-mandatory) opinion in a courtroom setting. Since it was not a court precedent, it did not definitively solve the issue of rights between slave owners and black slaves in England. However, it provided slave owners with a rationale to refer to in later “trover” suits.

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43 James Walvin, *Britain’s Slave Empire* (Charleston, SC: Tempus, 2000), 59.

44 Miranda Kaufmann,”.
More importantly, the Yorke-Talbot opinion suggested a merging of law between metropole and colonial jurisdictions with a preference for the positive law of the colonies to rule over the void of law of the homeland and perhaps one of the few examples of letting the inferior jurisdiction control the superior one. This casting of jurisdictional conformity stood at odds with the Holt decisions, but was perfectly in accord with slaveholder interests. Although, the opinion had yet to be tested in court, it was clear that slave holding interests had a predominant influence on the law.

One point that has not been sufficiently addressed is why the slave owners and proslavery lobbyists did not make stronger efforts to secure passage of a proslavery law or a court decision that definitively protected their legal status as slaveholders. While some of the most important points of their position had been stated in the Yorke-Talbot opinion, particularly the prohibition on baptism to effect emancipation, there was no decisive court case or law to back up the monetary equivalence between slaves and currency and the right of a slave owner to transport his slave from Britain back to the colonies. In studying this inconsistency between slave-owner power and effectiveness in legal machinery, Drescher points out the essentially informal nature of the “game of hide and seek” that was occurring during the 18th century between masters and slaves.45 For both, the informal settings outside the courtroom formed the vast bulk of decisions between owners and slaves. For owners, this consisted mainly of hiring men to force slaves onto ships for transshipment, or to recapture runaway slaves, or relying on the sense of obligation to the law of those who might harbor slaves to turn them in when they

45Drescher, Capitalism and Antislavery, 36.
became runaways. For the slaves, the communities of free blacks harboring and succoring runaway slaves, plus the initial impetus to run away from slavery, were the usual remedies of slaves subjected to brutal conditions of life. In other words, the extralegal context of British society was large enough to encompass the majority of discordant relations between masters and slaves, which Drescher characterizes as a form of “private class war” between the slave class and the master class reserving only a small role for the courts for a few high profile cases that did not fit the usual features of an extralegal solution.\textsuperscript{46} In many cases, these court cases were more a battle between two free men over the service value of a slave, rather than between a master and a slave.\textsuperscript{47} This basically reiterates the view that there was a legal vacuum filled with nothing but muddled and contradictory viewpoints. If the colonial property owners tried to fill this void by assuming the \textit{Yorke-Talbot} opinion had the force of either moral right or unstated legal authority, they were in need of remedying the deficiency of the law only in the arena where it meant something, such as the British homeland where competing movements of opinion sought to secure a filling in of the void and a clarification of the muddle. That the court cases in which this battle of opinion occurred were few and far between is not surprising given the informal or extra-legal nature of British society in the majority of the situations where slaves were handled.

Perhaps most important, until the latter half of the eighteenth century, British society supported a silent consensus that ignored and tolerated the idea of slavery within

\textsuperscript{46}Ibid., 35.

\textsuperscript{47}Ibid., 31-36.
the metropole as well as in the periphery. For instance, the court cases in which baptism of blacks was denied as a route to freedom, such as *Pearne v Lisle* (1749) and the *Yorke-Talbot* opinion, on which it was based, are relevant.\(^4\) The two judicial officers, Talbot and Yorke, unofficially synthesized a new proslavery doctrine applicable explicitly for the homeland. The extreme proslavery position did not allow any alternative explanations for the lack of rights of a slave who happened to be standing on the British mainland. Many in Britain believed this was the normative state of affairs up to 1772, when *Somerset* was heard.

Although, the *Yorke-Talbot* opinion was persuasively proslavery in its content, a few later cases opposed it in the decades between its reaffirmation (1749 by Yorke as Lord Chancellor Hardwicke) and the landmark case of *Somerset* (1772). At least three important interim court decisions seemed to sway the balance slightly toward antislavery opinion during these years or at least to oppose the *Yorke-Talbot* opinion.

In *Galway v Cadee* (1750), jurist Baron Thompson found that a slave arriving in England became a free man. *Shanley v Harvey* (1762) had a similar holding, this time by Lord Chancellor Henley.\(^5\) However, Henley’s opinion continued beyond his legally binding decision into the speculative, but influential realm of *dictum* (a judicial opinion that is not part of a judicial decision but more persuasive in nature) to render the opinion that black slaves had the right to file a *habeas corpus* writ in cases where the slave owner

\(^{48}\) *Pearne v Lisle* (1749) 27 English Reports (1557-1865) 47-49 (Ch.) (eng.) http://home.heinonline.org/ (Accessed: 10/ 7/2013) and Glasson, ““Baptism Doth Not Bestow Freedom”,” 279.

\(^{49}\) *Shanley v Harvey* (1762) 28 English Reports (1557-1865) 844-845 (Ch.) (eng.) http://home.heinonline.org/ (Accessed: 10/ 7/2013).
was inflicting inhumane treatment.\textsuperscript{50} This was one of the earliest occurrences of a discussion involving \textit{habeas corpus} on the slave’s behalf in connection with English court cases where he was the injured party (plaintiff). Although Shanley did not legally grant the privilege of \textit{habeas corpus} to black slaves, it blazed the trail for further consideration along this line, something that would prove to be critically necessary a decade later in cases such as \textit{Somerset} (1772).

The case of \textit{Jonathan Strong} (1767) was also critically important as a precursor to \textit{Somerset}. In that case, the Lord Mayor of London, Sir Robert Kite, released a jailed black youth because “the lad … was not guilty of any offense, and was therefore at liberty to go away.”\textsuperscript{51} This case shows what \textit{habeas corpus} was supposed to be about, if not mentioned explicitly, paving the way for future uses of \textit{habeas corpus} in English court cases.

Finally, in 1771, the Lord Chief Justice Mansfield, who would a year later hear the \textit{Somerset} case, held in \textit{Rex v Stapleton} (1771) that a black slave named Thomas Lewis could not be sent, by the alleged slave owner Stapleton, from England back to the colonies because there was no legal evidence that Lewis was owned as a slave by Stapleton.\textsuperscript{52} This case was more of a skirmish than a battle for abolitionists because it resolved on a point of ownership without addressing the more important issue of the rights of black slaves.

\textsuperscript{50}“Miranda Kaufmann,”.
\textsuperscript{51}Drescher, \textit{Capitalism and Antislavery}, 189.
\textsuperscript{52}“Miranda Kaufmann,” \textit{also see} Drescher, \textit{Capitalism and Antislavery}, 189.
The judicial course of black slavery in England was not only controversial, but largely ambiguous and meandering, a true hodge-podge of muddled decisions seeking to fill a seemingly unfillable vacuum, due to various unresolved issues and contrary court decisions (along with some less than binding judicial opinions and dicta) prior to *Somerset*. In particular, a select set of holdings seemed to vary from the pre-existing accepted position that black slavery in England was a form of property. A different way of looking at this was that the English judiciary had never before been challenged to the extent of trying to distinguish differences between law for the homeland in relation to that operating in the colonies, nor had it directly addressed the issue of whether a homeland court decision could be held legally binding on the colonies as well. While the cases of the late 17th century brought a slight amount of progress toward abolition, the next quantum leap would occur with the *Somerset* case of 1772.

THE IMPORTANCE OF *SOMERSET*

What has *Somerset* (1772) brought us to? The case had an importance when it was decided in 1772, but its importance can also be considered in terms of its enduring value. When the decision of Lord Mansfield was stated originally, the main points were 1) slavery in England could only be justified by positive law, 2) no such positive law was current in England in 1772, 3) the question before the court about the detention of Somerset for deportation was not consistent with the current laws of England and therefore the defendant must be let go. There is the importance of *Somerset* as one of a line of British court cases that helped clarify the status of slavery in England in order to bring the issues of abolition into clearer focus.
However, *Somerset* was not itself very clear in interpretation. What kind of ambiguity did it raise? The first ambiguity was in application, whether or not the ruling ought to be generalized to all British slaves or kept only for Somerset himself. If the former, would the ruling help determine the ultimate fate of slavery in London, or the entire empire? If just the homeland, what did this imply about the general British jurisdiction within its empire? If the latter, how could the ruling be reconciled with the abolitionist movement’s successes of 1807 and 1834? It is apparent that *Somerset* (1772) was used as more than a particular ruling about a particular individual because of its reiteration in later court cases and it contributory effect to later phases of abolitionism.

What does this imply about the place we currently occupy in the history of law? The period before *Somerset* in England was, according to periodization, one of primacy for proslavery sentiment, but also one of limited jurisdictional effect of British court rulings. For one, they were not meant to supplant Parliament’s primary law giving authority. The British did not have the concept of judicial review in the sense of the judiciary being able to weigh in on a Parliamentary law for its constitutionality. This pre-*Somerset* period can be characterized as a no man’s land of negative law acting like an emptiness or void waiting to be filled in by homeland British law on the subject of slave rights. It was a period characterized by informality of dealings with slaves, with rare instances of court battles mainly between two non-slave English litigants trying to see who would win in a struggle for slaves as property. The later periods of law, including the present, saw more of the extension of British law to cover wider segments of the empire starting with homeland, then the sea lanes, and finally the colonies. In this extension of judicial reach, the effect of Parliamentary laws against slavery, such as the
acts of 1807 and 1834 were synergistic. This latter period can be characterized as quantum leaps of clarification and filling of the void in English homeland law. As the state took over responsibility for the treatment, classification of slaves, and the eventual prohibition of not only slave trading, but slavery itself, the legal aura of antislavery became ever more prominent.

In a wider sense, this transition between periods is basically what the *Somerset* (1772) ruling has to say about the history of law. The use of agents to help shape history can be seen in the strategies and successes in court decisions by Granville Sharpe. Law has a kind of history of its own, in the sense of a succession of judicial decisions that are related in some way to each other and may indicate a kind of progression toward a new understanding of the law. In this sense, the history of law helps augment the other views that are available in historical analysis and may clarify the reason why England was the first to achieve a genuine form of abolition. The understanding of various other facets of historical analysis, when helped by the perspective of the history of law, is like a playing field that the history of law helps set for the other factors that have previously been studied with regard to *Somerset* (1772) and British abolitionism.

**1772 SOMERSET COURT CASE**

The situation of slave status in the British homeland dramatically changed in 1772 when a civil case in London occurred. A runaway black slave named James Somerset was the subject of the civil case. Charles Steuart, a Navy captain, who was to become the chief customs officer of Boston, purchased Somerset. Steuart brought the slave with him to England.
Somerset soon left his master and disappeared for two years. Similarly, many other English blacks before him had done the same. After a couple of years, Steuart finally found and seized Somerset. He was planning to have him shipped to the West Indies where he would be reintroduced to being a slave at hard labor. Before he could be shipped out, however the premier British abolitionist, Granville Sharp, instituted a civil writ of *habeas corpus*. This essentially meant that Steuart had to prove in court why he should be allowed to ship Somerset out of Britain. The celebrated *Somerset* case resulted.

This case concluded after half a year. Several proslavery lawyers, who were hired by the West Indies planters, represented Steuart. The planters were eager to use this as a test case to see if the British judicial system would support their rights as slaveholders to detain and transport slaves. On the other hand, Granville Sharp had several lawyers, among them Francis Hargrave, to defend Somerset against deportation.

Lord Mansfield heard the arguments for and against Somerset in court. Mansfield sought to have the case settled out of court because he did not want English judicial law to weigh upon the case and establish a precedent either for or against the rights of slaveholders in the metropole. He saw disadvantages to either kind of decision. “Mansfield was an expert on commercial law and was loath to make a decision which might disturb the property-basis of black slavery.”53 After several continuances and delays, however, he finally made a decision. Many have recognized that decision, although extremely brief, as an important document that symbolized the beginning of a more positive government response to abolitionism.

The litigants went into *Somerset* with different objectives in mind. Somerset wanted to gain his freedom and not be sent to the West Indies to end his life in hard labor as a recaptured slave. Granville Sharp’s motives are less clear. There is some evidence that his motives were not purely humanitarian. In addition, to wishing for freedom for Somerset and abolition for black slaves in general, Sharp and Hargrave gave indications that they were disturbed at the prospect of what might happen to the British white laboring classes with an influx of black slaves, as might conceivably happen should the *Somerset* case be decided in favor of Steuart.

*Somerset* was unique in that the key issues of British slavery were combined into a single case. Those issues were 1) whether the old British laws on *villeinage* were equivalent and binding on contemporary black slaves in the homeland, 2) whether colonial laws on slavery filled the void in homeland law, and 3) whether geographic location of a slave, on the homeland vs. elsewhere, made a difference in his or her slave status. Hargrave, speaking on behalf of Somerset and the abolitionists, argued that the long-lost white *villeinage* in England could not be revived as black slavery because of “the discouragement of it by the courts of justice. They always presume in favor of liberty.”

Hargrave’s main point was that positive law in England recognizing slavery died out with the extinction of *villeinage* in the seventeenth century. As if confirming the requirement of positive law in England to revive slavery, Hargrave went on to say,

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54 Brown, Moral Capital, 95.
55 Brown, 38.
“There is now no slavery which can be lawful in England, until the legislature shall interpose its authority to make it so.”\textsuperscript{56} This emphasis on positive law as a prerequisite for slavery, coupled with Hargrave’s implicit assumption that it would have to come from Parliament to be legitimate, was still narrow in applicability by the jurisdictional limits of authority of Parliament. In terms of exciting controversy, Hargrave played up the idea that Steuart’s team was trying “to introduce [domestic slavery] into England; long and uninterrupted usage from the origin of the common law, stands to oppose its revival. All kinds of domestic slavery were prohibited, except villeinage.”\textsuperscript{57} Hargrave then attempted to show the effective extinction of both slavery and villeinage in England, leaving a void of positive law in the homeland, to emphasize the jurisdictional difference from the colonial positive laws on slavery.

Steuart’s West Indies supporters and their lawyers, however, had a different perspective. Because the West Indies slaveholders had not established any particular rights as slaveholders in the metropole, they were anxious to prove their slave holding rights, amply buttressed by colonial laws, enforced by the law courts at home. They wanted to consolidate their influence within the Empire in general to substantiate and validate the institution of slavery. This is why the proslavery lawyers insisted on gaining not only the value of Somerset’s service, but also his perpetual servitude as a returned slave.\textsuperscript{58}

\textsuperscript{56}Ibid., 72.


\textsuperscript{58}Davis, Problem of Slavery, 484-485.
Lawyers James Wallace and John Dunning, representing Steuart’s position as well as that of the West Indies planters, argued that positive laws of *villeinage* did not invalidate slavery in England: “Villenage in this country is said to be worn out [yet] are the laws not existing by which it was created?” In so doing, they prefigured the idea of Parliamentary supremacy (or Parliamentary sovereignty) as the bulwark of the figurative British constitution, by which an act of the legislature, no matter how ancient or currently controversial, dominates until a later contrary law supersedes it.

In addition, Wallace argued that “Lord Holt’s opinion [that trover does not lie with blacks in England] is a mere dictum, a decision unsupported by precedents.” This approach attacked not only previous court progress toward jurisdictional differences between metropole and periphery, but also sought to ally with an earlier period of British recognition of stronger property holders, pushing the clock backwards for slavery. This was a deliberate effort to reverse trends toward abolition in the homeland for a period of time prior to *Somerset*.

Chief Justice Mansfield was not known to be either proslavery or antislavery. Krikler suggests ambiguity about Mansfield’s probable attitudes about blacks, race, and slavery based on events from his personal life as well as his court decisions. Mansfield’s affection for Dido, the black slave who attended his niece, raises the bar of expectation.

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60 *Somerset*, 98 *English Reports (1378-1865)* at 499-510.
that Mansfield, while similar in many other respects to his elite judicial brethren in the British courts, did not regard all blacks as mere chattels. Against this is Mansfield’s equating black slaves with chattel in his later Zong (1783) decision. Walvin, in his book about the Zong case, summarizes the motivating factor for Lord Mansfield in the following way: “Mansfield [was] keen to see no damage done to the nation’s commercial prosperity.” Walvin’s phrase makes the point that Lord Mansfield was first and foremost interested in commercial fairness and only secondarily interested in the champions of freedom for slaves. As such, it would have seemed unlikely Mansfield could have come up with a decision in Somerset that was favorable for black slaves, just as it was perhaps less predictable than his comparing slaves to horses in Zong (1783).

Mansfield’s two prominent court cases that ended favorably for black defendants, Stapleton (1771) and Somerset (1772), suggest he had some regard for the rights of blacks. However, his handling of the Gregson (1783) appeal, referring to the murdered black slave cargo as equivalent to horses thrown overboard at sea due to absolute necessity, reopens questions about his views and that of the British judiciary on the humanity of blacks.

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63 Rex v Stapleton (unreported) [case], (1771) quoted in Drescher, Capitalism and Antislavery, 189.

Mansfield’s decision in *Somerset* was brief but ambiguous. Unfortunately, various listeners in the audience transcribed it with questionable accuracy. At that time, there was no official designated transcriptionist of court proceedings. One of the more credible transcripts of that decision runs thus:

The state of slavery is of such a nature, that it is incapable of being introduced on any reasons, moral or political; but only by positive law, which preserves its force long after the reasons, occasion, and time itself from whence it was created, is erased from memory.\(^6\)

A summary of Mansfield’s main points would look something like this:

1. British law did not have any positive laws that gave slave holders the right to hold and ship black slaves out of Britain.

2. Therefore British law did not recognize Somerset’s detention or deportation by a slaveholder. Somerset was therefore discharged from slavery to Steuart.

As Mansfield had tried to suggest earlier in the case, slaveholders should try to pursue their rights by getting Parliament to pass a *positive* law recognizing their rights. He preferred the development of the *positive* law to adjudicating in a void of law.

Unfortunately, the brevity of his decision was such that it left itself open to many kinds of interpretations and misinterpretations. Perhaps that is because it did not say certain things it might have, such as whether the decision was applicable beyond Somerset himself or what Mansfield meant by the word “discharged” when applied to Somerset’s legal disposition.

This raised a number of questions. For one, there were questions of the narrowness or breadth of applicability of the court decision. Did the decision mean that

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\(^6\)Howell, “Case of James Sommersett,” 82.
only the holding and shipping of Somerset was outside British law, or did it apply to individuals other than Somerset, for places other than the homeland, and to slaveholder rights other than detaining and transportation? Second, did the hearing of the case itself establish a precedent of *habeas corpus* as being a concept applicable to black slaves; in other words, did it create recognition of black slaves in the metropole as human beings worthy of *habeas corpus* consideration, as opposed to mere chattel objects? Third, did the word “discharge” as used by Mansfield mean that Somerset was entirely free of Steuart or was he supposed to be the slave of Steuart for all other purposes while in Britain? If the former, did that discharge apply to all blacks then living in the metropole and to all blacks who might arrive there in the future as slaves? In order to better understand these issues it is necessary to review the public reactions to *Somerset* at the time of its pronouncement.
IV. CREATING POSITIVE LAW
REACTIONS TO SOMERSET

Not only was Mansfield’s decision a problem for all concerned, but it would have unanticipated effects that were relevant to the future course of British abolitionism. One way in which to approach this is to see how it affected different groups of people at the time.

The abolitionists, their supporting media and the homeland public ignored the narrow and ill-defined interpretation to the Somerset decision given by Lord Mansfield. Their spin on the decision was to prefer to believe that it established that any black who set foot on the soil of the British metropole must immediately be considered free. This raised the collateral question of what constituted British soil. The colonies found Mansfield’s decision perplexing. They wondered if it also applied to any black slave who was physically standing on the colonial soil of the British Empire. It also did not answer the trans-jurisdictional issue of what would happen if a former slave, set free by walking in Britain, were to walk on the slave soil of the colonies afterward. Would he or she revert back to a slave status just by a transitory change in location?

West Indies planters reacted by retrenching to solidify what privileges and rights that they possessed in the colonies. This was not new to the proslavery interest. As Swaminathan notes in his literary survey of planter rhetoric in the British periphery, writers such as Martin and Norris had long opposed the kind of “moral economy”

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66 Brown, 97.
proposed as antislavery logic by writers such as Adam Smith in his *Wealth of Nations*.\textsuperscript{67} Arguments of self-interest and benevolent paternalism toward slaves were added to earlier descriptions casting slaves as nothing more than chattel. \textsuperscript{68} Therefore, slaveholders sought validation of their property rights as guaranteed by British maritime commercial law.\textsuperscript{69}

Mansfield’s decision had not voided the possibility of future positive laws for slavery in Britain. He did not regard it as freeing slaves in Britain or as giving them any rights beyond the right to not be detained and transported outside Britain by slaveholders. He did not regard his decision as allowing slaveholders who had lost slaves to the British soil to claim any compensation for this. He did not support back wages for former slaves. He did not even react in *Zong (1783)* in a humanitarian way, but merely referred the case back for retrial, which the claimants would not do for fear of adverse publicity, since the notoriety of the case guaranteed the public’s awareness and outrage that their claim was steeped in murder.\textsuperscript{70}

Court cases involving black slaves were not limited to the British homeland with its common law jurisdictional concepts. A number of cases involving black slaves originating in British maritime trade routes also occurred after *Somerset (1772)*, using the alternative judicial system called transmarine or admiralty law. Admiralty law was based

\begin{itemize}
\item \textsuperscript{68}Ibid., 494-497.
\item \textsuperscript{69}Srividhya Swaminathan, "Developing the West Indian Proslavery Position after the Somerset Decision," *Slavery and Abolition: A Journal of Save and Post-Slave Studies*, 29.3 (2003): 56.
\item \textsuperscript{70}Krikler, 33.
\end{itemize}
on an entirely different concept of the law than British common law. It originated from the Roman traditions like in *Justinian Code* of ancient times, which is the basis of all European civil law. As it affects the issue of British abolitionism, however, British admiralty law had little effect other than to preserve the status quo regarding the validity of black slavery outside of the British homeland. The admiralty judicial cases not only preserved slave status, but disregarded the slave rights implications of *Somerset* (1772). One difference between admiralty law and British civil law is that the definition of slave as chattel belongs to admiralty law. The admiralty law also favored the main presumption asserted by the *Yorke-Talbot* opinion that a slave residing in Britain had only a temporary freedom; as soon as he travelled back to a colony he became a slave again. The most flamboyant of these cases was *Zong* (1783) in which Lord Mansfield compared the black slaves who had been killed for insurance money to horses, a chattel item under admiralty insurance law cases.

There are only a few cases of British admiralty law, other than the *Zong* case, which are well known today. The earlier cases, from the years between *Somerset* (1772) and the passage of the anti-slave trading bill (1808), which include *Webster v De Tastet* (1797) and *Williams v Brown* (1802). In *Webster v De Tastet* (1797), the court would not allow slaves to be insurable as chattel property.71 The idea that different court practices could give different results did not diminish the proslavery tone apparent in most of the admiralty cases. *Williams v Brown* (1802) is even more interesting because it took place only 5 years before the British passed the anti-slave trading bill. In this case, a black

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seaman sued for back wages because he was seized from a ship while in colonial waters and had to be ransomed off by his captain to continue his seaman duties. The importance of the case from antislavery view is that the admiralty court allowed the slave to enter into a working contract for wages even if he was considered a slave at that time. So the slaves were considered, at least by admiralty court justices, as legally competent to make contracts for wages. The impact of these cases considered together is that slavery as an institution was upheld by the admiralty judges, but the treatment they gave to side issues such as contract formation and insurance payments could go either way. In general, however, these cases supported the proslavery viewpoint and were thus at odds with homeland jurisprudence.

The next set of admiralty cases included one that occurred after the passage of the 1808 anti-slave trading bill, but before the 1834 emancipation bill passed Parliament. In the *Diana* (1813), a British warship seized a shipment of black slaves aboard the *Diana*, a ship sailing under the Swedish flag. The British admiralty court ruled that the ship owner was allowed to have the slaves returned to him because slave trading was not outlawed in Sweden. This was recognition of the right of another nation that subscribed to slave laws. It was an example of international law being used by the admiralty judges to cover and counter the British parliamentary law against slave trading. The admiralty courts viewed the laws of other countries as binding on their enterprises and as not being liable for correction by the British. This represented support for other nations’ slave laws.

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even while Britain was struggling with its abolition influences to throw slavery off altogether.

Perhaps the most celebrated of the admiralty cases other than *Zong* was the case of the *Slave Grace* (1827). It occurred only 6 years before the emancipation law and 19 years after the anti-slave trade bill. A black slave, Grace, accompanied her mistress from Antigua to Britain. On the return voyage to Antigua, Grace was seized as a slave being traded in violation of the 1808 anti-slave trade bill. The admiralty justice, Lord Stowell, decided that Grace was a slave before entering the British homeland as well as once leaving it. He treated Grace’s slavery as a continuity that was broken temporarily only by her being for a period of time in Britain.

“…this notion of a right to freedom by virtue of a residence in England…is contested…upon the ground that the residence in England conveys only the character so designated during the time of that residence, and continues no longer than the period of such residence.”

Lord Stowell’s decision maintained slavery as being valid outside of the British homeland. It added to this the idea that freedom gained while residing in the homeland evaporated upon exiting Britain. This circumscribed *Somerset* totally, creating in effect an anti-*Somerset* kind of proslavery zone outside of Britain.

*Somerset* (1772) was perceived at the time by many as making slavery illegal in the homeland. But, to Davis it was the first firing shot in the abolitionist battle that then relied on the second big shot, *Zong* (1783) to make a more powerful effect on the

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conscience of the abolitionist audience. This in turn catalyzed the development of an important abolitionist movement that would eventually be politically potent, the SEAST (England’s society for effecting the abolition of the slave trade). So, Somerset (1772) was the first in a row of dominoes leading to abolition and emancipation. (“Somerset…was popularly interpreted, in America as well as Britain, as outlawing slavery in England.”)  

In Drescher’s explanation, the main effects of this sequence were two. First, there was a chilling effect on the further attempt at intrusion of West Indies slave laws into the British homeland. “Whatever the weight of the West Indies interest in British politics, it did not extend to institutionalizing slavery in the metropole.” Second, it fanned the flames that led to the American Revolution, due to the conflicting dialogues it precipitated between homeland and American colonials.

There were two unintended effects of Somerset (1772). The first was a moral clarification of the evils of slavery. The second was a dichotomizing draw between abolitionists and the West Indies proslavery faction. The decision did not allow the proslavery interest to advance further into the homeland in the direction of Parliamentary law. So again, it had a chilling effect on them in the homeland. But, at the same time it allowed them to retrench in their colonies in the belief that Mansfield and the common law of Britain would not be coming after them in the near future to divest them of their slaves. “The Somerset case helped establish the British Isles, in the mind of the British, as
a unique asylum for liberty. It might only have reinforced their toleration of colonial slavery and the Atlantic slave trade if the American Revolution had not intervened."\textsuperscript{77}

Davis emphasizes the key organizational effect \textit{Somerset} (1772) had in catalyzing abolitionism, while Drescher is more interested in how it negated proslavery and Brown emphasizes how the two camps settled into geographic isolation from each other. All three views may be correct, as the rise of abolitionism and the corresponding weakening of proslavery factions in the homeland, but their retrenchment in the colonies, were all part of the process of parliamentarianizing the issue into national laws years later. However, Davis looks more at the political shock wave in Parliament, while Drescher is more interested in the American Revolution and Brown is more dubious of its effect by itself except to divide the factions further (polarizing conflict). These are the same thing looked at in three different ways. The galvanizing of Parliament to make anti-slave law, the onset of the partitioning of the British Empire between Britain and America, and the polarization effect of abolitionism were all necessary parts of the ongoing parliamentary evolution toward greater and more mature jurisdictional control over the remaining colonies under British control after the American Revolution.

The significance of the \textit{Somerset} decision is arguable. What was its immediate consequence in the history of British abolitionism? What wider significance did it portend in terms of innovations in the interpretation of British law? What enduring challenges did it pose for jurisdiction and precedent?

The direct effect of \textit{Somerset} (1772) on the subsequent course of British abolitionism is difficult to detect because there was no immediate legislative response

\textsuperscript{77} Brown, 101.
between 1772 and Wilberforce’s first motion for the abolition of slave trade in 1787.
This absence of Parliamentary action was eloquent in its silence, since neither side of the
debate could move the law for many years. However, the West Indies lobby acted
effectively in a negative way, showing its ability to thwart periodic attempts by the
abolitionists to raise bills, to ameliorate slavery, register slaves, abolish the slave trade, or
emancipate the slaves. Although, the West Indies was not able to get a positive slave law
passed in England, it used its attrition efforts to keep Parliament from passing an anti-
slave law.

Parliament and the homeland civil courts took no new major action before 1808.
However, the Admiralty courts, responsible for commercial laws of maritime England, as
well as the colonial courts, were not silent and according to commercial law, the legal
standing of cargo or chattel possessions explicitly included slaves. This contention was
nowhere more popularly known than in the infamous Zong case (1783).78 In terms of the
rights of slaves, it pointed directly opposite of Somerset (1772). Other cases, which the
admiralty law figured conspicuously, were related to actual events occurring aboard
British ships and ships of other nationalities in which the British fleet was involved.
These admiralty cases were about British ships boarding other ships looking for and
sometimes seizing, what they thought were illegally shipped slaves, contravening the
British anti-slave trade bill of 1808.

From a quite different angle, Somerset served to heighten public awareness of
imperial questions that were more important within the legal machinery of the British
Empire. For one, there was the question of jurisdiction. Did the British Empire’s judicial

78Gregson, 99 English Reports (1378-1865) at 629-630.
and parliamentary decisions extend in their authority to the colonies? One argument in favor of this was that the colonies and the metropole alike were under the authority of the Crown (the British monarch), however, the Parliament, which was also operating under the concept of parliamentary supremacy (or sovereignty), gained theoretical authority as a result of the Glorious Revolution and the Restoration of the monarchy after Cromwell. At the earlier part of this process, Parliament seems not to have been sure that its authority should be fully dominant over local municipal colonial governments. Parliament eventually utilized this opportunity by becoming more authoritative, as separate from the Crown. Parliament finally became superior to the Crown as the supreme authority of the Empire, although it was timid at first to exert this power to its full extent. One example of this inertia and timidity was the deference Parliament seemed to give to many colonial legislatures in running their own local affairs, which included local positive laws upholding the rights of slave holders and thereby reinforcing the institution of slavery. This initial, voluntary ceding of parliamentary jurisdiction over the colonies seemed to initially limit the impact of Parliament’s legislative and legal decisions.

Another after-effect of Somerset (1772) was its perceived lack of applicability to colonial law or custom due to the presence of positive slave law in the colonies and hostile public reception to Somerset (1772) among the colonial public. As Brown asserts, regarding the entire course of British abolition, “The custom of colonial autonomy, then, presented a formidable block to prospects for emancipation, as it did more generally to the exercise of imperial authority.”

79 Brown, 243.
Other effects of *Somerset (1772)* are detectible if only to confirm its jurisdictional limits in affecting the colonies. For instance, Cotter notes that the initial reception to *Somerset (1772)* in the Massachusetts colony was alarming: “Lemuel Shaw, Chief Justice of the Massachusetts Supreme Judicial Court, for example, thought that the case may have abolished slavery in Massachusetts.”\(^80\) Several civil suits and petitions for freedoms by blacks in Massachusetts followed, unsuccessfully due to executive vetoes by the Massachusetts colonial governor, Hutchinson.\(^81\) In this remarkable test case of jurisdictional reach, it is apparent that, despite the rare controversial opinions of some colonial justices, perhaps those with a wider sense of vision judicially, the colonial pattern of resisting homeland abolitionist views persisted. In later years, the judicial thought process in America, while in transition from being British colonies to an independent country would run parallel or seem to absorb some of the teachings of *Somerset (1772)* even while American Revolution was ongoing.

More after-effects of *Somerset (1772)* in the early years of the United States include the Massachusetts Supreme Court case of *Walker v. Jennison (1781)* in which a slave named Quock Walker petitioned to be set free due to a promise of freedom he had received from his slave owner.\(^82\) Massachusetts State Chief Justice William Cushing recognized black slavery in that state as being in conflict with the state’s constitution. In


\(^81\)Ibid., 423-425.

effect, Walker and related cases ended all question of slavery in Massachusetts. Beyond the Revolutionary War, there are traces of Somerset (1772) in later years. For example, Ohio lawsuits involving blacks sojourning there referred to Somerset (1772) and the Matilda (1837) case. The later cases in Massachusetts State perhaps set a new pattern or trichotomy between England, the American North and the American South. In this trichotomized view, the North and England gradually merge in their abolitionist perspective, leaving the South to remain outside that view.

Other after-effects of Somerset (1772) include subsequent cases with similar outcomes, such as the Scottish cases Knight v Wedderburn (1778), Montgomery v Sheddan (1756), and Spens v Dalrymple (1769). The Knight (1778) case is pivotal in extending the Somerset (1772) concept throughout the British Isles and giving it a confirmatory aura. In one sense, the Scottish cases seem to give little more than an echo of support to the principles established by Somerset (1772), without going further in the direction of direct freedom rights for black slaves. However, in a larger sense, Knight (1778) established in its wording the idea that justice and morality were on the side of antislavery, something that would encourage the progression of jurisdictional dichotomy that would eventually result in a parliamentary legislative reaction. The Knight (1778) appellate decision strongly argued against distant jurisdictional control of the black slave, Knight, from afar by a colonial law that did not have power in the British Isles for

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85Catteral, ed., “England”, 18 also see in "Miranda Kaufmann,".
“sending the negro out of this country, without his consent...supposes the dominion
given over the pursuer by the law of Jamaica to be just. The negro is likewise protected
against this by the statute 1701, c.6, which expressly prohibits the carrying any persons
out of the kingdom without their consent.” The decision protected Knight’s rights as if
he had full imperial citizenship legal protections, indicating a vast divide from
Wedderburn’s attempted use of the positive slave laws of Jamaica to bind Knight over.

Court decisions disfavoring black slaves in the metropole continued in parallel
with Somerset (1772) and Knight (1778). In some of these cases, the court denied back
wages to black slaves working for a slave holder. The usual rationale in these holdings
was there had been no formal contract between a slave (considered a non-person in court
standing) and a free person. The most notable of these cases was Alfred v Marquis of Fitz
James (1799) in which the court would only have enforced an express (not an implied)
offer of wages to a black slave. The gradual increase in the court’s recognition of
metropole black rights did occur, with various cases attacking other aspects of slave
holder rights. Critically, the court ultimately did recognize black slaves as defendants
with human rights by means of not allowing them to be held against their will under the
doctrine of habeas corpus.


87Catteral, ed., 22-23.
Although, *Somerset* was the symbolic initiator of government response to antislavery among the British, the issue of amelioration remained quiescent until reactivated in 1787 when MP William Wilberforce began the series of parliamentary initiatives that would take him twenty years to achieve imperial legal prohibition of the British slave trade.\(^{88}\) It would take at least that long until imperial authority through parliamentary supremacy would be able to ramify more strongly through parliamentary laws that could span across the oceans to have effect as maritime law and override colonial law. Along the way, there were interim cases in abolitionism. In *Williams v Brown* (1802), the court stated that the slave was “as free as any one of us while in England.”\(^{89}\) In *Forbes v Cochrane and Cockburn* (1824) slaves escaping from a Spanish colonial plantation to a British naval vessel gained freedom because a slave coming from “West India settlements…would thereby become as much a freeman as if he had come into England. He ceases to be a slave in England, only because there is no law which sanctions his detention in slavery… but they went on board an English ship (which for this purpose may be considered a floating island), and in that ship they became subject to the English laws alone.”\(^{90}\)

Cases following *Somerset* (1772), such as *Cay v Crichton* (1773), *King v Inhabitants of Thames Ditton* (1785), and *Alfred v Marquis of Fitz James* (1799) varied in outcome.\(^{91}\) In *Cay v Crichton* (1773), the court refused to enforce the provisions of a last will and testament that attempted to transfer slave ownership of a black, even though the testator had died prior to *Somerset* (1772) in 1769. This case is especially interesting


\(^{89}\)Ibid., 40.


\(^{91}\)“Miran da Kaufmann,”.
because both sides stipulated (legally agreed) there were no longer any slaves in the British homeland.\textsuperscript{92}

In \textit{King v Inhabitants of Thames Ditton (1785)}, the court rejected an attempt by a black woman to use a local parish government office to take jurisdiction in settling a claim by considering her as a member of the parish accessible to its resources.\textsuperscript{93} The main point decided in this case was that claims for wages cannot be made by a slave against the master because slavery is not a form of legal hiring; indentures on the other hand are legal hiring with a legal constraint to serve the master and so are accessible to wage claims. However, this post-\textit{Somerset} ruling by Mansfield reiterated his \textit{innuendo}, so ambiguously phrased in \textit{Somerset} (1772), that the British laws should exclude either current or former black slaves from access to the free man’s poor laws system of England.\textsuperscript{94} This maintained the impression that, in the homeland, slavery and slaves remained invisible to the law. In \textit{Alfred v Marquis of Fitz James (1799)}, as noted above, the court would not allow a black man back wages from a master since slavery was not recognized as a contractual type of service with wages.\textsuperscript{95} The issue of wages for the labor of slavery was more of an economic attack on the institution of slavery than one involving the expansion of human rights for black slaves; in other words, not an issue of legal or political abolition.

\textsuperscript{92}Drescher, \textit{Capitalism and Antislavery}, 194.


\textsuperscript{94}Cotter, 39-41.

\textsuperscript{95}\textit{Ibid}. 
Rather than a step forward, *Somerset* (1772) can be viewed from a legal perspective as a type of *status quo* solidification between barriers to judicial authority. Such barriers would bolster abolitionism within Britain while diminishing its force abroad. This would have a polarizing effect between homeland and periphery. However, that aggregation was more of a legislative evolution than a judicial one and requires a different kind of non-judicial and legislatively-focused analysis. Therefore, the earliest developing phase of abolitionism had not yet formulated a strategy based purely on either amelioration of slavery conditions or emancipation, either gradual or immediate. There were, rather, many versions of abolition, but no single unified theme.

**EXTENDING PARLIAMENTARY JURISDICTION IN THE EMPIRE**

The court cases established a vacuum or absence of positive law (actual written down law) and contradictory rulings, creating jurisdictional confusion, which eventually demanded a legislative response. Although, historians of British abolition have not often analyzed the evolution of Parliamentary authority in slavery issues from national to global from the perspective of the law, there were three distinct jurisdictional phases of British imperial expansion: 1) A British homeland phase from approximately 1772 to 1807, characterized by a growing popular wave of abolitionism in the homeland without a corresponding increase in resoluteness by Parliament, a de facto absence of slavery in the homeland, and a lack of jurisdictional authority over colonial legislative affairs including colonial laws on slavery. This manifested as thwarted and ineffective Parliamentary legislative action until the passage of the anti-slave trading bill in 1807. 2) A maritime phase from 1808 to 1833, characterized by the extension of Parliament’s
jurisdiction and suppression of slavery from homeland to the seas controlled by the British Empire. 3) A colonial or global phase from 1834 to 1840, beginning with the passage of the emancipation law of 1833 and its gradual application to the colonies, marked by globalization of Parliamentary effectiveness in abolishing slavery in the British Empire.

Historians have left a void on the subject of challenges to parliamentary sovereignty on the slavery issue. It is not clear if this is because the concept has been taken for granted from a homeland oriented perspective or the challenges by colonialists apart from the American Revolution were few and far between. However, it is the challenges to parliamentary sovereignty that temporarily hemmed in the expansion of the imperial jurisdictional concept and delayed its fullest development. Jurisdictional expansion occurred in contingent stages as the British Empire expanded.

The abolitionists pressed Parliament to take on a larger and more imperial role. Prior to the English civil war and the Glorious Revolution of 1688, Parliament was not the supreme law of the land, but was instead dominated by the Royal prerogative. After the Glorious Revolution, the principle, if not reality of parliamentary supremacy was established as a template for its eventual fruition. One insightful analysis of parliamentary sovereignty is actually a study of British constitutionalism by Justin Buckley Dyer. In his analysis of the challenges, to British constitutionalism, Dyer asserts that the liberty interests behind the development of abolitionism in Britain induced Parliament to actualize these interests by simultaneously drawing upon the theoretical
assumption that it had a sovereign authority over the rest of the empire, one that could not be gainsaid by contrary court decisions or unauthorized royal decrees.\textsuperscript{96}

The importance of distinguishing between these phases, for the purpose of studying British abolition, is that with each successive new incorporation involving the spread of legal power of enforceability of homeland parliamentary decrees, a greater degree of legal uniformity and homogeneity, paralleled at some point by a greater degree of popular democratism in shaping the deliberative body of representatives authoring those decrees, reflected an increasing wave of feedback between public opinion, and governmental policy. The combined effect of growing parliamentary authority to global proportions and increased sensitivity of Parliament to popular opinion gave abolition the essential tool it had previously lacked for achieving its goals.

Several facets to the first phase of Parliamentary growth of power, the homeland phase, are pertinent here: First, it was not clear during this time period whether the law extended in jurisdiction only to the homeland. This was a hot topic because many at first tacitly assumed that parliamentary supremacy meant Parliament’s authority or imperial jurisdiction was absolute and universally applicable, including over the colonies. This was before clever objectors to Parliamentary interference in the domestic affairs of colonies arose and advanced ambiguity as a refutation to parliamentary supremacy when

it was putatively being held over the internal affairs of colonies. Davis provides an excellent example of this in the attempt of MP Charles Ellis in 1792 who persuaded Parliament to support recommendations to the colonial governors, to be circulated by the crown, for domestic legislation that would decrease the islands’ dependence on the African [slave] trade.\textsuperscript{97}

Davis makes it clear that many interpreted this as a lessening of parliamentary “jurisdiction over the slave system,” meaning the domestic legislative domain of the West Indies colonies in question.\textsuperscript{98} It was a pretext for the proslavery lobby to indicate its resistance of the fundamental nature of parliamentary supremacy when expanded overseas.

Sachs articulates a powerful argument for the role of colonial legislators as a key resistant factor to the spread of British imperial jurisdiction in her article about the Coleman family lawsuits in Revolutionary and post-Revolutionary America on behalf of freedom petitions for American slaves of mixed Indian and African heritage. According to Sachs,

Beginning in the 1760s, a new generation of colonial lawyers articulated a radical critique of imperial policy as violations of both constitutional and natural rights… First presented by James Otis in his 1761 case against the Writs of Assistance, this thinking cast imperial measures as abuses of parliamentary authority and, therefore, as violations of constitutional law. More importantly, they conceived of such violations as contrary to the basic set of God-given natural rights that resided in every individual.\textsuperscript{99}

\textsuperscript{97}Davis, \textit{Problem of Slavery in}, 116.

\textsuperscript{98}Ibid., 116.

Abolitionism in its nascent development was at first neither ameliorative nor abolitionist during this phase. There were well-organized proslavery forces in the legislative Parliamentary houses of the Commons, the Lords, and the royals (monarch). This was one key reason why Parliament and its partners in national power managed to delay and scuttle Wilberforce’s anti-slave trade proposals time and again, from the 1780s until its passage in 1807. The delaying agents came from not only the House of Lords and the Royals, but also internally from an initially strong proslavery contingent in the House of Commons. The antislavery forces benefited from anti-Jacobin public reaction linking supporters of the French Revolution with antislavery politics in Britain. In addition, the Royals were often actively hostile toward not only abolition but slave trade prohibitions. Perhaps the most explicit example of this is the first public political speech by the Duke of Clarence (the future King William V) in 1792 when he reacted to the French slave revolt on San Domingo (Haiti) by declaring that “it [black slavery] ought not to be abolished at all.”

The decision of the Jamaican legislative body to resist the 1807 anti-slave trade bill was even more symbolic of the resistance to the imperial extension of parliamentary sovereignty at this point:

“In a series of resolutions adopted October 29, 1807, the Jamaican House of Assembly asserted its exclusive and absolute right to make all laws for the internal governing of the island; denied the right of Parliament to interfere in its domestic concerns; claimed that no laws could be binding on those not represented in the parliament which enacted them; and recognized their duty to resist by all constitutional means any law that subverted the ancient principles of the British constitution.”


101 Davis, *Problem of Slavery in*, 118.
The second development phase for Parliamentary power extension was the Maritime phase (1808-1833). This period saw British supremacy on the seas in the process of fighting against Napoleonic Europe. This phase was relevant because other European nations were strongly opposing British parliamentary sovereignty as a harbinger of British imperial global hegemony. However, the British imperium’s strength globally, as witnessed by its naval power, was fully capable of implementing the expression of abolition in the form of prohibitions on the slave trade, as in the 1807 parliamentary act.

The British Royal Navy, specifically the West Africa Squadron and the commercial maritime or admiralty laws for the high seas enforced this maritime jurisdiction, as applied to prohibition of the slave trade. However, the homeland British government also traditionally controlled the metropolitan municipal laws of Britain, setting up a potential conflict of laws.

The aim of this phase as it regards slavery was actually, merely ameliorative, not abolitionist. The abolitionist strategies were not uniform and unified, but changed over time from ameliorative to emancipatory. The ameliorative strategy was devised as a compromise or second best strategy realizing that the nation would not go to the extreme of emancipation in a single step. Its main advantage was as a measure of compromise between the interests of slaves and slave owners. The parliamentary 1807 slave trade act aimed to indirectly improve the lot of slaves in the periphery without directly freeing them, by cutting off the supply of new imported slaves to the colonies. The idea of amelioration was a theoretical one and speculatively based on the logic of the law of
supply calculated to affect the emotions of the slave owner. The government assumed this would decrease the colonial supply of slave labor and make slaves more precious to their owners. The owners would then presumably treat their slaves more compassionately, as their external, import supply of new, replacement slaves would be cut off. In short, this phase aimed to better the existing conditions of slavery, not end it. This strategy was a total failure at bettering condition, besides not meeting the goal of freedom for slaves. Another possible abolitionist motive for pushing the anti-slave trade bill was to decrease the number of slaves in existence. Its rhetoric was anti-slave, but its practice was ameliorative. So it had both an express intent of amelioration and an implied intent of decreasing slavery, both of which were without the benefit of emancipating current slaves.

During this second, maritime phase, Parliament claimed jurisdiction over the seas and the slave trade as part of its expanding functional jurisdiction, which ran parallel to Britain’s growing sea lane hegemony as it beat down Napoleonic French fleet and their allied fleets from Spain and Holland. The British West Africa Squadron had the capability to go ashore or fire cannons from their boats offshore to destroy slave centers of trade in Africa and to land in the colonies with armed force if need be to apprehend an illegal slave vessel that might be harboring at a colony. It also assumed the right to seize and search seafaring vessels flying non-British flag colors. At the same time, Parliament often maintained a more than healthy respect for colonial affairs and colonial municipal government by allowing the colonies’ legislatures to rule locally, including their unchallenged use of positive slave laws. So, powerful as it may have seemed, the second
parliamentary phase was actually a force of continuity more than a force for change and as such; was doing the opposite of interfering with colonial slavery.

Proslavery forces organized quite effectively during this period and actively resisted abolition in whatever political and economic shape it presented. However, antislavery forces became increasingly well organized and would eventually align themselves with parallel reform movements involving non-slaves, such as labor and women’s rights. At this point, from 1808 to 1833, no one confused these human rights based liberalizing forces with their more revolutionary counterparts, republicanism or radicalism. The antislavery forces mounted an increasing influence over the younger Lords and Royals coming of age, as their older, proslavery predecessors began retiring or dying of old age and disease. Despite this seeming equilibrium between antislavery and proslavery forces, antislavery forces encountered discouragement upon seeing that amelioration strategy was failing to have any effect due to colonists’ resistance to change. This led to a shift toward total abolition as a new strategy. Even so, the new strategy took from 1808 to 1833 to get action in Parliament.

The third and final time period of parliamentary jurisdiction uniformity and global expansion was a trans-Colonial phase (1833-1840). During this period, the imperial jurisdiction of Parliament extended and dominated over all of the empire including the colonies, unless the colonies enacted a superior law that was even more benign to former slaves than the parliamentary slave abolition act of 1833.

While generally more expansive, the trans-Colonial phase of parliamentary authority was a gradualist type of legislative regime. For instance, the slave emancipators
chose a doubtful apprentice system as a way to make the change more gradual. It retained most of the functions of servitude for former black slaves in the colonies, while giving a few nominal rights of free persons. However, the original plan was to take years to end apprenticeship; the indemnity provisions favored slaveholders and were not a form of restitution to the slaves.

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V. CONCLUSION

Attention to the legal dimensions of antislavery adds to our understanding of timings, methods and success of the movement in the British Empire. It extends the insights of earlier historians who examined the social, moral, and economic factors at play. Ever since Eric Williams challenged the simple humanist explanation of abolitionism, historians have explored a complex range of factors that shaped antislavery. The developments in law help to explain why abolitionism arose when it did and also the difficulties it had to overcome over many decades before it could succeed.

While, abolitionism for the British Empire would have to wait for the parliamentary law of 1833 to liberate black slaves in the colonies, the British homeland found the situation far different for its own local population of black slaves. A series of British court cases in the 18th century denied slaveholder rights in Britain, but left slave law undetermined. This was both a firm foundation and a great challenge of abolitionism. Expanding political participation and the extension of parliamentary legal powers beyond Britain were the means for eventual antislavery victory.

The British experienced the development of a government more favorable for abolitionism due to the eventual occurrence of court cases that effectively ignored slaveholder rights to transport black slaves (such as Somerset) and the gradual expansion of parliamentary jurisdictional authority from one limited to the homeland to one encompassing the trans-Colonial empire. With increasing homeland judicial recognition of black slaves’ rights and the gradual extension of parliamentary jurisdictional authority
to encompass Britain’s colonial periphery, the imperial policy changed to a more comprehensive and legally enforced, form of freedom for black slaves involving not only the further rights of those in the homeland, but also in the colonies.

From the early 1700s onward, a succession of landmark homeland court cases involving the rights of black slaves led to various interpretations of the limits of slavery. The idea that slaves might have different rights in different jurisdictions first came to light in the natural rights case of *Lilburn* (1637) when the famous phrase from *Cartwright* (1567) was recruited (“England’s air is too pure for a slave to breathe”), but was little more than rhetoric at the time. Butts v Penney (1734) rejected baptism as a possible gateway to freedom for slaves. In *Smith v Gould* (1701), the idea that black slaves could not be treated as merchandise for litigation purposes because white villeins could not, raised white *villeinage* as the homeland rights standard against which black slaves had to be judged. In 1729, the *Yorke-Talbot* opinion created a new barrier, although a non-official one, to the idea of the British homeland as a freedom zone for slaves. Finally, *Shanley v Harvey* (1762) opened the way for the writ of *habeas corpus* to be used as a powerful tool on behalf of blacks seeking freedom in court suits. All of these important judicial concepts and more would come to fruition in the landmark case of *Somerset* (1772), when the absence of positive parliamentary laws for slavery on

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104 *Butts v Penny*, 83 English Reports (1378-1865) at 518.

105 Catteral, ed., 11.

106 Glasson, 279.

107 *Shanley*, 28 English Reports (1557-1865) at 844-845.
Britain’s homeland soil would be a sufficient reason to disallow enforcement of a slave holder’s claims to deport a runaway former slave.\textsuperscript{108} With the exception of the \textit{Yorke-Talbot} opinion, most of the later homeland court decisions advanced the cause of abolitionism by providing greater and greater legal justification to provide black slaves in court with the necessary legal tools to be able to win court cases against slave holders.

A legal analysis of the British imperial evolution that recognizes expanding natural rights and parliamentary sovereignty trends toward universal imperial jurisdiction adds to our understanding of these events. This suggests that the maturation of British jurisdictional reach and the other factors studied by previous historians are interrelated.

A point worth considering is why Britain antedated other European nations in the choice to enforce antislavery. Britain, as contrasted to European nations on the continental mainland, did not have slave codes or codified constitutional laws that dealt with slavery explicitly. While the concept of slavery from medieval times was well known to British scholars as well as continental ones, it was the European continent that chose to express the institutions of slavery in no uncertain legal terms. Britain, lacking not only an explicitly constructed constitution, but contemporary legal expressions that distilled slavery down to a legal formula or description, gave more of an open playing field to allow the various forces in British society to jockey for position to influence the outcome of slavery and antislavery in Britain. The very ambiguity that characterized much of British law, and courtroom rhetoric, in comparison to the more explicit codifications and managed handling of slavery issues in countries such as Spain and

\textsuperscript{108}Somerset, 98 \textit{English Reports (1378-1865)} 499-510.
France, allowed the British to lose what small hold slavery had taken on the British homeland without much legal effort. The best evidence in support of this is the way in which British slavery faded away in a de facto way after a simple, but ambiguous statement by Lord Mansfield in the *Somerset* case (1772), with the help of the British media and the antislavery factions, and with very little resistance by antislavery elements in the homeland. Given such a loose and ambiguous legal environment, Britain had perhaps the best chance to achieve an early victory in antislavery. There was also a progressive trend toward emancipation that proceeded in steps through prohibition of the slave trade to actual emancipation, without much in the way of reversals, except for hiatus periods during which the movement lagged, but did not find itself reversed.

Of much greater significance to British abolitionism and other contemporary movements involving British liberal philosophy during the late eighteenth century and early nineteenth century, the forces of legal controversy unleashed by *Somerset* (1772) and other cases may have contributed significantly toward a much more widespread form of legal revisionism within the British Empire. The extent of this legal revisionism involved not only a strengthening of the concept and enforcement of imperial jurisdiction across the seas and in the colonies, but also partook of a greater sensitivity on the part of the central British government to the democratizing opinion of the population at large.

In the traditional manner of English law, the *Somerset* (1772) ruling was so short, narrowly crafted, and ambiguous it frustrated both proslavery and abolitionist factions seeking definitive resolution of the broad-based questions of English slavery. Eventually, the fruit of this ruling and others helped turn the tide against proslavery advocacy.
However, for immediate purposes, English judicial law during the Holt, Yorke, and Mansfield eras refused to resolve whether or not slavery was legal. For example, Somerset’s discharge created an ambiguity in interpretation of the law until, eventually, British legislative acts created a new kind of positive law that filled the void. In a larger sense, the vacuum of positive homeland law had an observable effect of galvanizing each side to attempt to fill the void. In this sense, the void of homeland law on slavery indirectly pushed toward positive antislavery laws that provided a wide ranging and imperial conclusion to the British position on slavery.
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