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English Common Law, Slavery, and Human Rights

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ENGLISH COMMON LAW, SLAVERY, AND HUMAN RIGHTS

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This paper considers the issues of villeinage and slavery in England and the British colonies; the decision in *Somerset v. Stewart*[1] and other cases in English common law courts; the application of English common law in the colonies in the eighteenth and nineteenth centuries,

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1. Somerset v. Stewart, (1772) 98 Eng. Rep. 499 (K.B.).

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with particular reference to the British colonies of Demerara, Essequibo and Berbice (formerly British Guiana, now Guyana); the Magna Carta 1215 to the Slavery Abolition Act 1833; the factors which led to the introduction of human rights provisions in English law in the Human Rights Act 1998; and the decision of the House of Lords in *A & Others v Secretary of State for the Home Department*[2] in 2005, relating to the question of admissibility of evidence procured by torture.

The thesis of the paper is that English common law was found wanting in connection with the application of fundamental principles of human rights in the United Kingdom and colonies. Lord Mansfield and the other judges who heard the case of *Somerset* were provided with an excellent opportunity to apply fundamental common law principles of personal security and liberty of the individual to rule that slavery and the slave trade were in breach of the common law and to set a precedent by declaring the liberty of each and every slave who arrived on English shores. Sadly, the judgment failed to live up to the expectations of many of those who had followed the case with avid interest, and it was not until 228 years after that judgment that fundamental principles of human rights became part and parcel of English domestic law, with the introduction of the Human Rights Act 1998 on 2 October 2000.

I. ENGLISH COMMON LAW AND VILLEINAGE

A large proportion of land held in England after the Norman Conquest in 1066 was held in villein tenure. Villeinage was a system whereby villeins, *i.e.*, legally unfree peasants or serfs, were tied to the manor, held on behalf of the lord of the manor, worked on the lord's estate at the will of the lord, and did not have control over goods and property. The King's courts would not recognise any claim by these tenants of the lord. The services of an unfree tenant were fixed as to quantity but unfixed as to quality, and thus the tenant did not know what work he might be given by the lord of the manor each day. It might be ditching, threshing, or driving a cart. A distinction was made between unfree tenure and unfree status. Some tenants held on unfree tenure but were not of unfree status. Those of unfree status, however, could only hold by way of unfree tenure. Until the fourteenth and fifteenth centuries, some tenants who held on unfree tenure were themselves personally unfree and their status was little short of slavery. People of villein status were personally unfree and any land which they held was on unfree tenure.[3] The test of villeinage was the uncertainty of the nature of the work which the tenant was required to

2. A v. Sec'y of State for the Home Dept. [2005] UKHL 71, *available at* http://www.bailii.org/uk/cases/UKHL/2005/71.html.

3. *See* R.E. MEGARRY, A MANUAL OF THE LAW OF PROPERTY 18 (3rd ed. 1962).

perform.[4] Villeinage declined in the fourteenth and fifteenth centuries when the system of labour service was replaced by a system of money payment whereby the tenant in villeinage paid rent to his lord (landlord) instead of rendering personal services.[5]

II. ENGLISH COMMON LAW AND SLAVERY

During a lecture delivered in 1988 by Shridath S. Ramphal, then Commonwealth Secretary-General, he posed a question as to where the common law stood in relation to the barbarity of slavery.[6]

A. *The Slave Trade*

Dr. Walter Rodney referred to the slave trade as the "notorious commerce in human beings."[7] Rodney pointed out that Africa was the home of mankind, as humans were in existence in Africa nearly two million years ago, that some of the African kingdoms and empires had flourished before the birth of Christ, and that various kingdoms and empires in East, West, and Central Africa had reached great heights before Europeans had arrived.[8] What was "one of the striking features about West Africa in the late eighteenth century and in the nineteenth century was that there were thousands of individuals living in a state of slavery or serfdom."[9]

First, the slave traders set sail from Europe to West Africa where they bartered goods, guns and ammunition for Africans. The traders along the African coasts sought young people between the ages of 15 and 25 and in the proportions of two males to one female. Sometimes children as young as nine years of age were taken as well as people older than 25. The suffering of the Africans was immense. Many who had been seized had never seen the sea or white people previously. They were torn from their families and friends and often arrived at the coast in a weak and exhausted condition, having been forced to march for hundreds of miles inland. Throughout West Africa, villagers lived in fear of being seized and sold into slavery.

Second, the traders crammed the Africans into their ships and crossed over the Atlantic "middle passage" to the Americas where they delivered the Africans to the plantation owners to work as their slaves.

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4. G. C. CHESHIRE, MODERN LAW OF REAL PROPERTY 24 (1967).

5. *Id.*

6. Shridath S. Ramphal, Commonwealth Secretary-General, The Kapila Fellowship Lecture at the Council of Legal Education, "Let the slave go free . . . .": Britain, the Commonwealth and the Common Law 4 (Dec. 15, 1988).

7. WALTER RODNEY, WEST AFRICA AND THE ATLANTIC SLAVE-TRADE 3 (1967).

8. *See* WALTER RODNEY, THE GROUNDINGS WITH MY BROTHERS 35–36 (1971).

9. RODNEY, *supra* note 7, at 16.

Third, the ships were then used to convey produce from the plantations to Europe. John Hawkins was on record as the first English slave trader to have sailed to Africa in 1562 with a fleet of three ships and 100 armed men. It was probably the earliest successful attempt by an Englishman to have broken in on the Spanish and Portuguese monopoly.[10] Because of the success of his exploits, Hawkins was knighted by Queen Elizabeth I and chose the family emblem of a black man in chains.[11] Fiddes noted Rodney's description of Hawkins as "the shady Elizabethan adventurer."[12] He was referred to as possibly the most famous of the "unscrupulous brigands" who raided the coast of Africa for slaves and traded illegally with the settlers in the Spanish American colonies.[13] One of his descendants was recently reported to have knelt in chains before 25,000 Africans and asked for forgiveness for the actions of his ancestor.[14]

B. *African Slaves Were Legally Classified as Chattels*

One of the fundamental principles of British colonial slave laws was that slaves were regarded as chattels. They could be bought, sold, mortgaged, bequeathed, or liable to be impounded in satisfaction of a debt. This was provided in the laws of the West Indies and in English statutory law.[15] An example of this was in 1732, in the reign of George II, in An Act for the More Easy Recovery of Debts in his Majesty's Plantations and Colonies in America:

> [F]rom and after the twenty-ninth Day of September one thousand seven hundred and thirty-two, the Houses, Lands, Negroes, and other hereditary and Real Estates, situate or being within any of the said Plantations, belonging to any Person indebted, should be liable to, and chargeable with, all just Debts, Duties, and Demands, of what Nature or Kind soever, owing by any such Person to his Majesty, or any of his Subjects, and should and might be assessed for the Satisfaction thereof, in like Manner as Real Estates are, by the Law of England, liable to the Satisfaction of Debts due by Bond, or other Specialty, and should be subject to the like Remedies, Proceedings, and Process, in any Court of Law or Equity in any of the said Plantations respectively, for seizing, extending, selling, or disposing of every such Houses, Lands, Negroes, and other Hereditaments and Real Estates, towards the Satisfaction of such Debts,

10. *See* F.O. Shyllon, Black Slaves in Britain 3 (1974); RICHARD HART, SLAVES WHO ABOLISHED SLAVERY: BLACKS IN BONDAGE 23 (1980); James Walvin, Black Ivory: A History of British Slavery 25 (Fontana Press 1993).

11. *See* HART, *supra* note 10, at 24.

12. *See* Edward Fiddes, *Lord Mansfield and the Sommersett Case,* 50 L.Q.R. 499, 500 (1934).

13. *See* HART, *supra* note 10, at 25.

14. Alan Hamilton, *Slaver's Descendant Begs Forgiveness*, TIMES (London), June 22, 2006, at 9.

15. *See* E.V. GOVEIA, THE WEST INDIAN SLAVE LAWS OF THE 18TH CENTURY 21 (4th ed. 1979).

> Duties, and Demands, and in like Manner as Personal Estates, in any of the said Plantations respectively, are seized, extended, sold, or disposed of, for the Satisfaction of Debts . . . .[16]

These and other relevant provisions came before the English courts for consideration when cases were brought by or against slaves who claimed their liberty.

C. *The Slave Cases in the English Courts*

The limitations of the common law in maintaining human rights were brought into sharp focus when English courts were faced with cases arising out of the British involvement in the Atlantic slave trade from Africa to the West Indies and America. The courts found it difficult to reconcile the rights of property and the relationship of master and slave with principles of liberty confirmed in legislation such as the Habeas Corpus Act 1679, which declared that imprisonment of subjects due to be sent abroad in contravention of the Act was illegal.[17]

Some of the cases which came before the English common law courts posed difficult problems for the judges. Some of the judges took into account the religion of the slaves and divergent judgments were delivered. The following provide useful examples of the disarray in the decision making in the courts:

In *Butts v. Penny*,[18] an action was brought to recover damages in the common law action of trover, concerning the property rights in 100 slaves taken by the defendant. It was held that slavery was legal in England because black people were infidels and the subjects of an infidel prince and therefore without the rights enjoyed by Christians.[19]

In *Chambers v. Warkhouse*,[20] black people were described as merchandise and were compared with musk cats and monkeys, but this did not apply to a baptised slave.[21]

In *Smith v. Browne & Cooper*, a merchant claimed £20 in the English court as the price of a black slave sold by him in London.[22] Chief Justice Holt reaffirmed the principle that "as soon as a [N]egro comes into England, he becomes free: and one may be a villein in England, but not a slave."[23] He then gave leave to the claimant to amend his

16. Act for the More Easy Recovery of Debts in His Majesty's Colonies in America, 1732, 5 Geo. 2, c. 7, *available at* http://www.pdavis.nl/Legis_3.htm.

17. MICHAEL CRATON ET AL., SLAVERY, ABOLITION AND EMANCIPATION 157–58, 164 (1976).

18. Butts v. Penny (1677), 2 Levinz. 201.

19. *See* ANTHONY LESTER & GEOFFREY BINDMAN, RACE AND LAW IN GREAT BRITAIN 28 (1972); William M. Wiecek, *Somerset: Lord Mansfield and the Legitimacy of Slavery in the Anglo-American World*, 42 U. CHI. L. REV. 86, 89 (1974).

20. Chambers v. Warkhouse, (1693) 83 Eng. Rep. 717, 718.

21. *See* LESTER & BINDMAN, *supra* note 19, at 28.

22. Smith v. Browne & Cooper, (1701) 91 Eng. Rep. 566, 566.

23. *Id.*

claim to state that the law of Virginia applied, and that under that law, Negroes could be "sold as chattels."[24]

In *Smith v. Gould*,[25] Chief Justice Holt held that an action would not lie to recover possession of a slave, as no person could have property in another except in the special circumstances of villeinage, the law not recognizing that black people were different from other people.[26]

In *Pearne v. Lisle*,[27] former law officer Yorke, now Lord Hardwicke, Lord Chancellor, approved the decision in *Butts v. Penny* and held that trover would lie for a black slave as the slave was property as any other thing.[28]

In *Shanley v. Harvey*, a claim was instituted by Shanley as administrator of the estate of his deceased niece, Margaret Hamilton.[29] Shanley had brought Harvey as a child slave to England, 12 years earlier, and had given him to his niece.[30] She had him baptised and had changed his name.[31] She became very ill, and about an hour before her death, she gave Harvey £800–£900 in cash and asked him to pay the butcher's bill and to make good use of the money.[32] Lord Henley, the Lord Chancellor held, dismissing the claim, that as soon as a person set foot in England he or she became free, stating that a "'negro'" might maintain an action against his or her master for ill usage and might be granted *habeas corpus* if restrained of his liberty.[33]

In *Thomas Lewis's* case, *Rex ex rel. Lewis v. Stapylton* (unreported), Lewis, a runaway slave, was seized by a man named Stapylton and was put on board a ship.[34] Granville Sharp, a campaigner for abolition of slavery, rescued the slave as the ship left the harbour, and later, an action was brought against Stapylton and the two watermen who had helped to seize the man.[35] Lord Mansfield directed the jury that the point to be decided by them was whether a slave master had a legal right to forcibly remove a slave from England.[36] The jury stated that they did not find that the slave was the defendant's property and

24. *See* LESTER & BINDMAN, *supra* note 19, at 29; Wiecek, *supra* note 19, at 92–93.

25. Smith v. Gould, (1706) 91 Eng. Rep. 567, 567.

26. *See* LESTER & BINDMAN, *supra* note 19, at 29; Wiecek, *supra* note 19, at 93.

27. Pearne v. Lisle, (1749) 27 Eng. Rep. 47, 48 (Ch.).

28. Wiecek, *supra* note 19, at 94.

29. *See* Shanley v. Harvey, (1762) 28 Eng. Rep. 844, 844 (Ch.).

30. *Id.*

31. *Id.*

32. *Id.*

33. *See* LESTER & BINDMAN, *supra* note 19, at 30; Wiecek, *supra* note 19, at 94–95; CRATON ET AL., *supra* note 17, at 168.

34. *See* George Van Cleve, *Somerset's* Case and Its Antecedents in Imperial Perspective, http://www.historycooperative.org/journals/lhr/24.3/cleve.html (last visited Feb. 17, 2007) (discussing the background and outcoume of *R. v. Stapylton*).

35. *See id.*

36. *See id.*

found the defendant guilty, but Lord Mansfield ignored their verdict and advised that no further proceedings be taken.[37]

One of the most inhumane cases in the history of the Trans-Atlantic slave trade was the maritime insurance claim in *Gregson* v *Gilbert*,[38] known as the *Zong* case. The shipowners claimed at the Guildhall, London, for the loss of 132 slaves, valued at £30 each, who had been jettisoned—thrown overboard from a Liverpool vessel, the *Zong*, to drown in the Caribbean Sea. It was argued that the slaves were to be treated in law as cargo. The jury found in favour of the shipowners and ordered the insurance company to pay compensation for the dead slaves. The appeal by the insurance company came before the Court of King's Bench, where Lord Mansfield and two other judges ordered a new trial. Lord Mansfield commented that the jury had no doubt (though it shocked one very much) that the case of the slaves was the same as if horses had been thrown overboard. He considered it to be a very shocking case.

III. COLONIAL SLAVE PLANTATIONS IN GUYANA (DEMERARA/ ESSEQUIBO AND BERBICE)

Slaves had been imported from Africa to Guyana by the Dutch, French, and British from the 17th century to labour on the cotton, coffee, and sugar plantations.

A. *The Plantations in Guyana in the 19th Century*

The population of Guyana, South America, comprises six peoples: Indians, Africans, Amerindians, Portuguese and other Europeans, Chinese, and people of mixed heritage. The original inhabitants were Amerindians, mainly Caribs and Warraus, Arawaks, and Akawois.[39]

Guyana, in the early nineteenth century, comprised the colonies of Berbice, Demerara, and Essequibo. Berbice and the combined colony of Demerara-Essequibo were permanently taken over by the British from the Dutch in 1803[40] and by 1820 there were 96,000 slaves toiling to produce 46,000 tons of sugar.[41] The brown sugar produced on the plantations of the Atlantic coastal strip, which contains very fertile land and is below sea level, became known as the famous Demerara sugar.[42]

37. *See* LESTER & BINDMAN, *supra* note 19, at 30; Wiecek, *supra* note 19, at 100–01; SHYLLON, *supra* note 10, at 173.

38. Gregson v. Gilbert, (1783) 99 Eng. Rep. 629.

39. H. J. M. HUBBARD, RACE AND GUYANA: THE ANATOMY OF A COLONIAL ENTERPRISE 13 (1969).

40. *See* PETER NEWMAN, BRITISH GUIANA: PROBLEMS OF COHESION IN AN IMMIGRANT SOCIETY 16–21 (1964).

41. *See* CAMBRIDGE ILLUSTRATED HISTORY OF THE BRITISH EMPIRE 283 (P. J. Marshall ed., 1996).

42. *See* NEWMAN, *supra* note 40, at 19–20.

Guyana is unique in that the plantations were developed on land containing several canals, trenches, and dams built on the estates to control the flow of water. In many places, the water was almost stagnant, and diseases such as smallpox, yellow fever, malaria, and cholera affected the inhabitants. There were also conservancies, or reservoirs, of water behind the plantations. A sea wall was built along the coast as a barrier to the Atlantic Ocean.[43]

B. *The Inhuman Treatment of Slaves on the Plantations*

Torture, inhuman and degrading treatment, was meted out to the slaves. Slaves were legal chattels and were sometimes treated worse than mules. The term "mulatto" is derived from the word "mule" and was used to describe a person of mixed African and European heritage. Punishments received by the slaves were cruel and brutal. Dr. Alvin O. Thompson has documented several instances of brutality on Berbice plantations. A graphic example is the following extract from an account given by Thomas St. Clair, *A Soldier's Sojourn in British Guiana*, of a slave's right hand being chopped off for the offence of striking a white man:

> About the period that my thoughts were . . . directed to the subject of slavery, I heard of a punishment which was to be inflicted on a Negro, for striking a white man; and, being curious upon these matters, I followed the subaltern's guard, which was sent to New Amsterdam, to be present on this occasion. In the rear of the Government-house, a small platform was raised. . . . The poor wretch mounted the platform. . . . [T]he executioner of the law stepped forward and declared that this slave had been convicted, before the Court of Policy and Criminal Justice, of the abominable, rebellious, and horrid crime of striking a white man, for which he was sentenced to have his right hand, with which he struck the blow, severed from his body; and, turning round to the young prisoner, he ordered him to lay his hand upon the block. No sooner was this done than, with one stroke, the hand fell to the ground. He then walked from the platform, his arm streaming like a fountain with blood, and a surgeon, standing at the foot of the steps, bound it up, and conducted him to the hospital.[44]

Another example given by Thompson is the case of a pregnant woman, America, who was given 150 lashes with a cart-whip. The following is an excerpt from a letter from Rev. John Wray to Macauley in November 1816, enclosed in Lieutenant-Governor Bentinck's letter to Lord Bathurst, dated 26 May 1817.

> A FEW days ago, a poor woman of the name of America, at Sandvoord, has been cart-whipped in a most brutal manner. She is

43. *See id.* at 3–6, 18–21.

44. ALVIN O. THOMPSON, A DOCUMENTARY HISTORY OF SLAVERY IN BERBICE 1796–1834, at 93 (2002).

three or four months gone with child. According to several accounts, she got at least 150 lashes with two drivers. She was stripped naked, and had a lap put on, and tied to four stakes, with her belly to the ground. I am told that she is cut almost to pieces, and this must be the case, for I suppose she has not received a lash, nor slept a night in the stocks, since the commissioners looked over the estates. She is a soft, inoffensive, good working creature; it seems the cause of it was as follows:

She has a little girl in the manager's house, who was formerly in our school. The manager's wife, the descendant of an Indian, by a white man, had put the churn at the creek side, and some how or other it got away, and was probably carried down with the tide. This child was blamed for letting it go, and the mistress had her severely punished with a tough bush rope. America came to the house when she heard of it, not to find fault with the woman, but to reprove her child, and to talk to her. The manager's wife got angry with her for coming to the house and talking there; and probably considered [sic] it as interfering with her authority, drove her away. Whether America answered again or not I do not know. It, however, ended in this severe punishment to the negro, and loss of many days labour to the estate; perhaps of a child. The manager was from home two or three weeks, taking his pleasure up the creek with Swaving, as he had been a short time before with Mr. Hall, and of course the management of the estate was left with this coloured woman, and the overseer, who is well known to be one of the most drunken men in the Colony.

I saw out of my window poor America come limping from her wounds up to my house. I wish I could describe her looks and gestures when she approached us. She has been released from the stocks three days. We examined the wounds she had received on her buttocks; her posteriors had been but one wound. We looked with amazement and pity upon the long furrows which the whip had made, and which were now scaled over, but which by the use of a pin, matter would have dropped. The sight was dreadful, I am persuaded no farmer would have permitted a servant to have cut up an indifferent horse, as this pregnant woman was cut up; every stroke had cut deep and fetched blood. The tyrant, (for I can call him nothing else,) stands over the drivers with a stick in his hand to flog them, if they do not lay [it] on severely. Only conceive for a moment, two strong men with heavy cart-whips corded, flogging a poor unfortunate pregnant woman, laid flat on her belly, stretched on the ground naked, with her hands and feet tied to stakes, receiving upwards of 150 lashes, with one driver on one side, and the other on the other. After which she was taken, and both her feet made fast in the stocks for a fortnight or more, lying with her wounds upon a platform of hard wood, in a state of pregnancy, and none of her friends permitted to give her any thing to eat. To put her into the stocks was necessary to prevent her from coming to the fiscal to complain . . . America says she has not felt the child since she re-

> ceived this punishment. The law forbids more than thirty-nine lashes . . . .[45]

America suffered a miscarriage some weeks later, and the manager of the plantation was sentenced to three months' imprisonment plus a fine and costs.[46] He did not serve the full sentence, as he was paroled on the ground of his health and on the understanding that he would no longer be employed on that estate.[47]

Other punishments received by slaves included being chained and bound in prison; wearing an iron collar with projecting spikes; and having their hands, feet, and head placed in the stocks.[48]

IV. THE DEVELOPMENT OF HUMAN RIGHTS IN ENGLAND

Human rights provisions in England commenced with the Magna Carta 1215 and were developed further by the Bill of Rights 1688–89 and the Human Rights Act 1998.

A. *Magna Carta 1215*

In 1215, Magna Carta (Great Charter)[49] was the first instance of a declaration of human rights in English law. It enunciated a number of principles intended to restrict arbitrary royal power in relation to the king's relations with his free subjects. It included the principles that no freeman could be arrested or imprisoned except under due process of law; that the crown was bound neither to deny justice to anybody nor to delay anyone in their quest for justice; and that the person or property of a freeman must not be taken in execution except by the lawful judgment of his peers. The principles applied to free persons only and were therefore limited to the extent they excluded all those who were unfree.[50]

B. *The Bill of Rights 1688–89*

After Magna Carta in 1215, the next major declaration of human rights was contained in the Bill of Rights 1688–89.[51] The Bill of Rights contained declarations limiting the powers of the crown and stating the rights of citizens including the requirement for the crown to obtain the consent of Parliament before dispensing with or executing laws; that the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament; that excessive bail ought not to be required;

45. *Id.* at 94–95.
46. *See id.* at 95, 98.
47. *Id.* at 98 n.4.
48. *See id.* at 93, 95.
49. MAGNA CARTA 1215.
50. *See id.*
51. ENGLISH BILL OF RIGHTS OF 1689.

that excessive fines ought not to be imposed; that subjects had a right to petition the king; and that cruel and unusual punishment must not be inflicted. The common law that developed was based on negative concepts of liberty *e.g.*, Dicey's theory that "we are free to do everything except that which we are forbidden to do by law."[52] The British Constitution, being unwritten, does not contain fundamental rights in the strict sense, for the legislative supremacy of Parliament is such that it could limit or abolish rights which may be regarded as fundamental in other countries.[53]

C. *The Somerset Case*

The human rights movement began to develop in England in the latter part of the eighteenth century. Granville Sharp persisted with his campaign for the abolition of slavery and supported a number of slaves in court proceedings to assert their rights to freedom.

Granville Sharp was very displeased at Lord Mansfield's indecisiveness in *Thomas Lewis's case* in 1771, and he championed the cause of another slave, James Somerset. In an important decision, *In re James Somerset*, also reported as *Somerset v. Stewart*,[54] Lord Mansfield was more decisive. Somerset, an enslaved African, had been brought to London from America and escaped.[55] He was recaptured and held on a ship bound for the West Indies.[56] Somerset issued proceedings for *habeas corpus* for his release and it was argued that the air of England was too pure an air in which slavery could breathe.[57] Lord Mansfield and three fellow judges held that the state of slavery could not be enforced in the English courts while the slave was in England.[58] Somerset was ordered to be released.[59] The decision was hailed as a landmark but its consequences were grossly exaggerated.[60] S. S. Ramphal stated that Lord Mansfield might have declared "Let the slave go free," but added that it would have been going rather farther than he had intended, as Somerset had not been discharged because slavery was untenable under English law, but because there was not the machinery of enforceability that would have allowed rights of property primacy over the liberty of the subject.[61] Folarin Shyllon, in

52. JOHN WADHAM ET AL., BLACKSTONE'S GUIDE TO THE HUMAN RIGHTS ACT OF 1998 4 (2003).

53. O. HOOD PHILLIPS, CONSTITUTIONAL AND ADMINISTRATIVE LAW 43 (3rd ed. 1962).

54. Somerset v. Stewart (1772), 98 Eng. Rep. 499 (K.B.).

55. *Id.* at 499, 504.

56. *Id.* at 504.

57. *See id.* at 501.

58. *See id.* at 510.

59. *Id.*

60. *See* LESTER & BINDMAN, *supra* note 19, at 32; CRATON ET AL., *supra* note 17, at 169–70.

61. Ramphal, *supra* note 6, at 5.

a detailed critique of the *Somerset* decision, described the large number of black people who attended the court hearings, bowed to the judges after the judgment was delivered, and congratulated each other upon the "recovery of the rights of human nature."[62] He argued that Lord Mansfield had dithered and hesitated to pronounce judgment for a month because of personal weakness, economic or commercial reasons, the treatment of the slaves as property, and professional reasons, *e.g.*, his reluctance to overrule the opinion of the law officers, Yorke and Talbot.[63] Shyllon further argued that Lord Mansfield worded his judgment carefully to ensure that it did not amount to a declaration of emancipation for all the black slaves, as he was the "father of English commercial law" and was well aware that the slave owners would have lost at least £700,000 if the approximately 14,000 Africans in England at that time, had received their freedom.[64] Shyllon and Master Heward confirmed that despite the decision, examples of the impurity of English air for black slaves could be given for decades after Lord Mansfield was supposed to have liberated them.[65] They were still hunted and kidnapped in the streets of London, Liverpool, and Bristol.[66] Lord Mansfield was also said to have a personal relation to a slave, his niece by blood, Dido Elizabeth Lindsay, who was the natural daughter of Sir John Lindsay, Lord Mansfield's nephew. Lord Mansfield left a legacy to her in his will and confirmed her freedom.[67]

It has been noted that *Williams v. Brown* was one of at least 15 cases after *Somerset*, in which English judges gave judgments favourable to slaves.[68]

D. *The 1797 Act*

In 1797, an Act was passed which repealed part of the Act of 1732 referred to in Part II.B., above.[69] The effect of the repeal was to exclude "Negroes" from the list of items of property which could be liable for satisfaction of debts in the colonies.

E. *The Slave Trade Acts*

An Order in Council was passed in 1805, which prohibited importation of slaves from Africa to the newly acquired British colonies of

62. SHYLLON, *supra* note 10, at 110; *see also id.* at 108–10.
63. *See id.* at 117–24.
64. *See id.* at 171.
65. *See id.* at 174–76.
66. *See id.* at 167–74; EDMUND HEWARD, LORD MANSFIELD 147 (1979).
67. *See* SHYLLON, *supra* note 10, at 14–15; HEWARD, *supra* note 66, at 147; JAMES OLDHAM, ENGLISH COMMON LAW IN THE AGE OF MANSFIELD 321–22 (2004) (discussing background of Dido).
68. STEVEN M. WISE, THOUGH THE HEAVENS MAY FALL 198 (2005); *see e.g.*, Williams v. Brown, (1802) 127 Eng. Rep. 39 (upholding the manumission of a slave).
69. *See supra* Part II.B.

Berbice, Demerara-Essequibo, and Trinidad and allowed only a limited importation to those colonies from other British colonies.

The Slave Trade Act 1807 prohibited British subjects, residents and ships from participating in the trans-Atlantic slave trade from Africa and other foreign countries. It did not, however, abolish slavery,[70] nor did it abolish the inter-colonial slave trade between the various British West Indian islands and Guyana. Slaves were also smuggled into the British West Indies from foreign countries.[71]

The Slave Trade Act 1824 was passed to amend and consolidate the laws relating to the abolition of the slave trade.[72] The purchase, sale, or contract for slaves was declared unlawful, in addition to the removal, importation, or exportation of slaves. A section of the Act provided that slave trading was a criminal offence.[73] Certain provisions were directed at insurance and mortgages of businesses engaged in the slave trade.[74]

F. *The Case of The Slave Grace*

In the *Somerset* case,[75] Lord Mansfield, who was an expert on commercial law,[76] was more concerned about the economic loss to slave owners from his doing justice.[77] Accordingly, the English courts continued to recognize that slavery existed outside of "the air of" England and revived on the slave's return to the colonies.[78] In the case of *The Slave, Grace*, a female domestic enslaved African, named Grace, was taken from Antigua to England in 1822.[79] She resided with her mistress in England until 1823 and voluntarily returned to Antigua with her.[80] In 1825, Grace was seized by a customs officer of Antigua, on an allegation that she had been illegally imported in 1823.[81] Her mistress launched a legal action, and in 1826, a judge in Antigua ruled that Grace should be restored to her and that damages and costs were payable to the mistress.[82]

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70. *See* Act for the Abolition of the Slave Trade, 1807, 47 Geo. 3, c. 36, §§ 1–3, *available at* http://www.pdavis.nl/Legis_06.htm.

71. *See* HART, *supra* note 10, at 165, 194–97.

72. *See* Act to Amend and Consolidate the Laws Relating to the Abolition of the Slave Trade, 1824, 5 Geo. 4, c. 113, *available at* http://www.pdavis.nl/Legis_16.htm.

73. *See id.* at §§ 2, 10–11.

74. *See id.* at § 2.

75. Somerset v. Stewart, (1772) 98 Eng. Rep. 499 (K.B.).

76. WALVIN, *supra* note 10, at 15.

77. *See* DEREK ROEBUCK, THE BACKGROUND OF THE COMMON LAW 3 (2d ed. 1990).

78. The Slave, Grace, (1827) 166 Eng. Rep. 179, 179 (Adm.); *see also* LESTER & BINDMAN, *supra* note 19, at 32–34; SHYLLON, *supra* note 10, at 210–29; CRATON ET AL., *supra* note 17, at 172–74.

79. *The Slave, Grace*, 166 Eng. Rep. at 179.

80. *Id.*

81. *Id.*

82. *Id.*

On appeal, Lord Stowell upheld the judgment and stated that it had never happened that the slavery of an African, returned from England, had been interrupted in the colonies in consequence of a sort of limited liberation conferred upon him in England.[83] The maxim which applied to villeins in England "Once free for an hour, free for ever!" did not apply to "negro" slavery.[84]

G. *The Slavery Abolition Act 1833*

Slavery was eventually abolished in the British colonies by the Slavery Abolition Act 1833.[85] The purposes of the Act were to achieve the abolition of slavery throughout the British colonies, to promote the industry of the manumitted slaves by providing for a period of apprenticeship, and to compensate the slave owners in a sum of up to £20 million.[86]

Some authors have argued that Lord Mansfield's decision in *Somerset* played a great part in the American Revolution and the campaign for abolition.[87] Some have argued that economic factors made a huge contribution to the movement for abolition.[88] Others have stressed the immense influence of the movement for *Liberte, Egalite, Fraternite* (Liberty, Equality and Fraternity). During the French Revolution of 1789, many events such as those following the Haiti Revolution in 1791, especially the humiliating British losses to the African General Toussaint L'Ouverture, the leader of the revolutionary slaves in St. Domingue in 1794-1797; the large uprisings in Barbados in 1816, Guyana in 1823, Jamaica in 1831, and in other Caribbean islands, all forced the French and British governments to pass laws in abolition of the slave trade and of slavery.[89]

H. *The Slave Trade Act 1843*

The Slave Trade Act 1843 extended the provisions of the Slave Trade Act 1824 to British subjects wherever they resided, whether

83. *See id.* at 185, 193.

84. *Id.* at 186.

85. *See* Act for the Abolition of Slavery Throughout the British Colonies, 1833, 3 & 4 Will. 4, c. 73, *available at* http://www.pdavis.nl/Legis_07.htm.

86. *See id.* at §§ 1, 24.

87. *See* OLDHAM, *supra* note 67, at 305, 322–23; ALFRED W. BLUMROSEN & RUTH G. BLUMROSEN, SLAVE NATION 1–14 (2005); WISE, *supra* note 68, at 199–200.

88. *See* ERIC WILLIAMS, CAPITALISM & SLAVERY 178–96 (1994); HORACE CAMPBELL, RASTA AND RESISTANCE: FROM MARCUS GARVEY TO WALTER RODNEY (1987).

89. *See* HART, *supra* note 10; WALVIN, *supra* note 10, at 266–78; EMILIA VIOTTI DA COSTA, CROWNS OF GLORY, TEARS OF BLOOD: THE DEMERARA SLAVE REBELLION OF 1823, at 78–80 (1994) (discussing the effect of slave rebellion on the abolition of the slave trade and slavery); ADAM HOCHSCHILD, BURY THE CHAINS: THE BRITISH STRUGGLE TO ABOLISH SLAVERY (Pan 2006); DAVID BRION DAVIS, INHUMAN BONDAGE: THE RISE AND FALL OF SLAVERY IN THE NEW WORLD 159–74 (2006).

within the British dominions or in any foreign country.[90] The Act applied the provisions relating to slaves to bonded labourers who were held in servitude as pledges for debt or "pawns."[91] They were deemed to be slaves or persons intended to be dealt with as slaves.[92]

V. THE DEVELOPMENT OF HUMAN RIGHTS IN GUYANA

The Human Rights movement in Guyana had its genesis in the constant fight for freedom by the enslaved Africans and their demands for humanitarian treatment, from the time they had been taken into captivity. An early example of a major freedom fight and revolutionary movement for independence, was the Berbice Slave Uprising in 1763 in which Kofi (Cuffy) and others, leading the vast majority of the 3,833 Africans, gained control of a great part of the Dutch colony of Berbice for over ten months.

A. *The Influence of Rev. John Smith*

The human rights in Guyana received a further impetus on 23 February 1817 when the missionary, Rev. John Smith and his wife, Jane Smith landed in Demerara.[93] That was nearly ten years after the slave trade from the coasts of Africa was abolished on 1 May 1807.[94]

Illegal slave trading still continued, however, and there was smuggling of slaves from the Orinoco Delta in Venezuela, along the South American coast, to supply the Demerara market. Slave auctions continued to flourish in Demerara.[95]

Rev. Smith commenced preaching at Bethel Chapel on Plantation Le Resouvenir on 9 March 1817.[96] The congregation consisted overwhelmingly of enslaved Africans from plantations along the east coast of Demerara, and approximately half of them in the 1820's were African born.[97]

A favourite lesson studied by the enslaved Africans was the story of Moses leading the people of Israel out of slavery in Egypt to freedom in the Promised Land.[98] The Africans applied the story of Moses leading the children of Israel out of bondage in Egypt to their own situation of bondage on the plantations in Demerara.[99] The word was

90. *See* An Act for the Mere Effectual Suppression of the Slave Trade, 1843, 6 & 7 Vict., c. 98 (Eng.), *available at* http://www.pdavis.nl/Legis_15.htm.
91. *Id.* at § 2.
92. *Id.*
93. *See* DA COSTA, *supra* note 89, at 134–35.
94. *See Proceedings of a Court Martial in Demerara, on Trial of John Smith, A Missionary, reprinted in* BRITISH PARLIAMENTARY PAPERS, SESSIONS, 66 SLAVE TRADE (Irish Univ. Press 1969) (1823–24) [hereinafter *Trial of John Smith*].
95. *See id.*
96. *See id.*
97. *See* DA COSTA, *supra* note 89, at 48.
98. *See Trial of John Smith*, *supra* note 94.
99. *See id.*

spread across the plantations by the teachers of the catechism. Some of the Africans would have been of Muslim faith and were, no doubt, already familiar with some of the holy scriptures contained in the books of Genesis and Exodus in the Old Testament of the Holy Bible, which were also noted in the Holy Qur'an.[100]

The Qur'an is replete with passages detailing the exodus of the Israelites. There are over 80 references to Moses in the Qur'an.[101] Some of the enslaved of other African religions were also familiar with the legend of Moses as a great magician and custodian of the law.[102]

The Africans applied "the law of Moses," and one of their major complaints was that the planters were forcing them to break one of the Ten Commandments by preventing them from keeping the Sabbath day, Sunday, as a holy day on which they were to refrain from labour.[103]

B. *The Demerara Uprising in August 1823*

There were several uprisings and protests against the unjust treatment of the enslaved Africans at the hands of the mainly British and Dutch planters, but the largest occurred along the East Coast of the Atlantic in 1823.[104] It involved some 13,000, mainly Christian, slaves from 60 plantations, from Thomas Plantation to Mahaica, and was led by Quamina, African born, and Jack Gladstone, his son, of Success Plantation.[105] These large numbers were mobilised secretly, and took the planters by surprise.[106]

The Africans were asked by the Governor, John Murray, what were their demands. Their responses included "our rights" and "unconditional emancipation."[107] They argued that they were made of flesh and blood, just like the planters, and they demanded that they be treated with humanity.[108] They had erroneously thought that the King of England had declared their freedom in summer 1823 and that the planters were withholding the news from them (all that was despatched was a pronouncement for amelioration of their conditions *e.g.*, no use of the whip in the fields, no use of the whip on women, time off for worship, and so on).[109] Success was owned by a wealthy absentee slave owner, John Gladstone, M.P., father of William Glad-

100. *See id.*
101. *See* ABDULLAH YÛSUF ÁLÎ, THE MEANING OF THE HOLY QUR'AN (10th ed. 1999).
102. *See Trial of John Smith*, *supra* note 94.
103. *See id.*
104. *See id.*
105. *See id.*
106. *See id.*
107. *See id.*
108. *See id.* at 147.
109. *See id.*

stone (who later became Prime Minister of England)—hence Jack's surname. Quamina was the chief deacon of Bethel Chapel on plantation Le Resouvenir under the ministry of Rev. John Smith of the London Missionary Society.[110]

Some properties were burnt and several planters were put in stocks and subjected to great humiliation, *e.g.*, having their faces slapped by enslaved African women, but only two planters and one soldier lost their lives, as Quamina and Jack urged Christian restraint. Jack was said to have moved swiftly from plantation to plantation on horseback, rallying the slaves. Conch shells were blown by way of signals.

The uprising commenced in the early moonlit evening of Monday 18th August 1823, but was brutally suppressed by the 21st North British Fusileers, the First West India Regiment and the Demerara Militia, over two days.[111] Over 200 Africans were massacred at Bachelor's Adventure. Many were executed in the field. Some were tied to trees and shot. Heads were cut off and placed on poles along the East Coast, as a gruesome deterrent.[112]

Quamina fled to the bush but was tracked by Amerindian scouts employed by the Demerara Militia and shot. His decomposing body was openly displayed hanging in chains on a gibbet on Success Middle Walk for months. Wasps were said to have formed a nest in his stomach and to have flown in and out of his jaws which had hung frightfully open.[113]

C. *The Trials of Rev. John Smith and Others*

Jack Gladstone was tried by a court-martial of officers and the Chief Justice, hastily convened a week after the uprising, and he was sentenced to death. However, Governor Murray recommended clemency and transportation to Bermuda.[114] He was eventually banished to St. Lucia.[115]

Rev. Smith, who was blamed for fostering the plot and failing to notify the authorities, was tried by court-martial of officers and the Chief Justice and sentenced to death. He died in prison from pulmonary consumption, before a grant of clemency arrived from England, on the recommendation of the court. He became known as "The Demerara Martyr." He was buried very early in the morning in an unmarked grave, and some of the planters hanged his effigy.

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110. *See id.*

111. *See* DA COSTA, *supra* note 89, at 216–17.

112. *See* MICHAEL CRATON, TESTING THE CHAINS: RESISTANCE TO SLAVERY IN THE BRITISH WEST INDIES 283–90 (1982); CECIL NORTHCOTT, SLAVERY'S MARTYR 68–76 (1976).

113. CRATON, *supra* note 112, at 289; WALVIN, *supra* note 10, at 276.

114. *See Trial of John Smith*, *supra* note 94.

115. DA COSTA, *supra* note 89, at 244.

The trials featured duplicitous charges, summary, speedy, justice, hearsay, and other inadmissible evidence including entries in Rev. Smith's private diary. Worst of all, it took place before a "kangaroo court," which did not adhere to the rules of civil courts and consisted of several officers who had been involved in the slaughter of enslaved Africans on the plantations during the uprising. The court was presided over by Lieutenant Colonel Stephen Arthur Goodman, the local Vendue Master of slave auctions, who sat in judgment with 14 other officers. At least six of the 15 officers hearing the trials, including Lieutenant Colonel Goodman, had been involved in the field of action.[116]

The only lawyer was the Chief Justice, Lieutenant Colonel Charles Wray, who was ordered to join the panel, in an attempt to provide it with some semblance of respectability.

Many Africans were tried and were sentenced to death.[117] Some were granted clemency and were ordered to be transported to Bermuda or New South Wales, Australia. Several were ordered to be punished by flogging, with up to 1,000 lashes administered in some cases, a fate worse than death.[118]

Bristol, of Chateau Margo, a deacon in Bethel chapel, testified at Rev. Smith's trial on charges relating to his alleged involvement in the Uprising that on almost every estate there was a teacher, whose duty it was to teach the catechism. He stated that he had heard Rev. Smith read about Moses leading the children of Israel out of slavery in Egypt because they were slaves under Pharaoh. His evidence confirmed that the Africans applied the story of the Israelites to themselves and that what had created the discontent was that they had no other time to wash their clothes or do anything for themselves on a Sunday, because they had to go to chapel, and that some of them had been "licked" (flogged) because they had declined to attend to work given them by the planters on the Sabbath.[119]

D. *The Significance of the Uprising*

Bertie Ramcharan, former UN Acting High Commissioner for Human Rights, confirmed that the uprising played a significant part in the history of the growth of universal human rights.[120] This was achieved by the Africans' awareness of the movement for abolition of slavery in England, their knowledge of the law and their rights and the

116. *See Trial of John Smith*, *supra* note 94, at 53, 101–02.

117. DA COSTA, *supra* note 89, at 243.

118. *See* NORTHCOTT, *supra* note 112, at 84; CRATON, *supra* note 112, at 288.

119. *See Trial of John Smith*, *supra* note 94, at 62–68.

120. B.G. Ramcharan, *The Demerara Slave Rebellion of 1823: Guyana's Contribution to the Growth of Universal Human Rights*, HUM. RTS. TRIB., Mar. 2000, http://www.hri.ca/tribune/viewArticle.asp?ID=2545.

practical application of the Holy Scriptures and the "law of Moses" to their circumstances.

Following the cases, there was an outcry in England. An impetus behind the campaign for the abolition of slavery was led by Wilberforce, Buxton, Clarkson, Macauley, Brougham, and others. There were petitions denouncing the trial and treatment of Rev. Smith (not so much the enslaved Africans), and there were lengthy debates in Parliament, notably a speech by Henry Brougham.[121]

The compensation paid to the planters in Guyana at the time of emancipation was the highest throughout the British slave colonies. John Gladstone, M.P. was paid an enormous sum, which helped to fund his business interests in Liverpool, England.

After emancipation of the enslaved Africans had been granted in 1834, a system of apprenticeship (a form of economic bondage) was introduced to provide labourers for the plantations. This was strongly resisted by the former enslaved Africans and was prematurely brought to an end in 1838 when "full freedom" was attained, following which the British colonists imported to Guyana, Portuguese indentured labourers from Madeira and later Indians and Chinese.

VI. THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND ENGLISH LAW

The European Convention on Human Rights was promulgated following the horrendous events of the second World War. The United Kingdom first ratified the Convention in 1951. It was not, however, considered necessary to incorporate it into domestic law, as it was thought that the common law had adequately provided for human rights.[122]

A. *The Reasons for Incorporation of Articles of the Convention*

In the last two decades of the twentieth century, following a high number of referrals of cases from England and Wales to the European Court of Human Rights, there was a growing awareness that the common law did not sufficiently protect human rights and that incorporation was necessary.[123] Referrals of cases to the Court of Human Rights in Strasbourg were also very costly and time consuming for the parties, leading to the decision to "bring rights home."

An additional factor which contributed to the impetus for the Convention to be incorporated into English law was the conflict in the Balkans in Europe between the peoples of the former Federal Repub-

121. *See* NORTHCOTT, *supra* note 112, at 9–22.

122. *See* WADHAM ET AL., *supra* note 52, at 6.

123. Rights Brought Home: The Human Rights Bill (1997), *available at* http://www.archive.official-documents.co.uk/document/hoffice/rights/rights.htm (follow "Contents" hyperlink); *see also* WADHAM ET AL., *supra* note 52, at 283–98.

lic of Yugoslavia in the 1990's. "Ethnic Cleansing" took place, thousands of civilians were massacred, many were tortured, cities were devastated, economies were unsettled, hospitals were deprived of medical supplies, the infirm were abandoned, and families were divided. The human suffering was immense and had its effect on the British conscience.

The Human Rights Act 1998 was brought into force on 2 October 2000, some 228 years after the *Somerset* decision. The Act introduced fundamental principles of human rights into English domestic law. The Act has led to considerable changes in the practice of law in the United Kingdom since October 2000. Its main provisions are as follows: Section 1 defines the Convention Rights; Section 2 provides for consideration by courts and tribunals of European Court and other European bodies' decisions and opinions in the interpretation of Convention law; Section 3 provides that when interpreting legislation, whenever enacted, it must be read and given effect in a way which is compatible with the Convention rights, as far as possible; Section 4 provides a power for courts to make a declaration of incompatibility where it is not possible to interpret a statutory provision as being compatible with the Convention; Section 6 makes it unlawful for public authorities including courts to act in a way which is incompatible with the Convention unless they are required to do so by statute; and Section 7 provides the victim of an act of a public authority which is incompatible with the Convention with the power to bring court proceedings against the authority. The Act has created positive fundamental rights and fundamental law *i.e.*, constitutional law superior to ordinary law.[124] It was reported that the government had set aside £60 million to cover the cost of additional litigation likely to be generated by the Act in the first year of its operation.

B. *The Extent of Convention Rights Incorporated*

The Convention rights are as follows: the right to life (Article 2); the prohibition of torture or inhuman or degrading treatment or punishment (Article 3); the prohibition of slavery, servitude, or forced or compulsory labour (Article 4); the right to liberty and security of person (Article 5); the right to a fair and public trial within a reasonable time by an independent and impartial tribunal established by law (Article 6); the prohibition of punishment for a criminal offence which did not constitute an offence at the time of its commission (Article 7); the right to respect for private and family life, home and correspondence (Article 8); the right to freedom of thought, conscience, and religion (Article 9); the right to freedom of expression (Article 10); the right to freedom of peaceful assembly and freedom of association, including

124. Anthony Lester, *Human Rights Act: No Ordinary Law,* Counsel, Dec. 1999, at 22; *see also id.* at 22.

the right to join a trade union (Article 11); the right to marry and to found a family (Article 12); the prohibition of discrimination in the delivery of Convention rights on any ground such as sex, race, colour, language, religion and other grounds (Article 14); restrictions on political activity of aliens (Article 16); prohibition of abuse of rights (Article 17); limitation on use of restrictions on rights (Article 18); peaceful enjoyment and protection of property (First Protocol, Article 1); right to education (First Protocol, Article 2); right to free elections (First Protocol, Article 3); abolition of the death penalty (Sixth Protocol, Article 1); and provision for the death penalty in time of war (Sixth Protocol, Article 2).[125]

C. *The Convention in Practice – The "Evidence Procured by Torture Case" – A & Others, 2005*

A notable example of the impact of the Human Rights Act 1998 occurred in the case of *A & Others v Secretary of State for the Home Department (No. 2)*,[126] where the House of Lords held that evidence procured by torture was not admissible against a party to proceedings in a British court, regardless of where, by whom, or on whose authority the torture had been inflicted. Their Lordships considered several common law authorities, foreign judgments, and the European Convention on Human Rights in their judgment on their interpretation of provisions in the Anti-terrorism, Crime and Security Act 2001. A letter from this author to The Times on 13 December 2005 stated that the court was bound to take into account the Convention jurisprudence and to interpret legislation in a way compatible with it. A further letter to The Times on 16 December 2005, expressed the author's view of the limitations of the common law as follows:

> I do not share Dr [sic] D. R. Cooper's view on the track record of the common law in the field of human rights (letter, Dec 14). Its limitations were clearly apparent in relation to the slave laws of the British colonies, particularly in America, Demerara (now Guyana) and the West Indies.
>
> In the 18th century, Granville Sharp, a leading campaigner for the abolition of slavery, championed the causes of several slaves in the English courts. One of those was the court action of the slave, James Somerset, in 1772. He had been brought to London from America and had escaped. He was recaptured and held on a ship bound for the West Indies. Somerset issued proceedings for habeas corpus for his release and Lord Mansfield granted the order, based on the principle that the state of slavery could not be enforced in the English courts while the slave was in England. The decision was hailed as a landmark, but it was ineffectual outside English jurisdic-

125. Convention for the Protection of Human Rights and Fundamental Freedoms, Council of Europe, Nov. 4, 1950, 213 U.N.T.S. 222.

126. A v. Sec'y of State for the Home Dept. [2005] UKHL 71, ¶ 63.

> tion. English courts continued to recognise that slavery existed abroad and revived on the slave's return to the colonies.
>
> The common law's inability to protect the slaves from torture and inhuman treatment in the colonies is a matter of public record.[127]

VII. CONCLUSION

English statute law and laws of colonial legislatures in the reigns of George II–George IV, confirmed that slaves were legally regarded as chattels *i.e.*, movable property belonging to their owners, and were in the same category as mules and cattle. Lord Mansfield appeared to have been reluctant to declare that the fundamental common law rights of personal security and personal liberty were superior to the ordinary slave laws, notwithstanding the pressure placed on him by the cases introduced to his court by Granville Sharp and others. Lord Mansfield's solution of the dilemma was to say that there was no positive law that he could find to support a finding that the status of slavery travelled with the slave onto English soil. There was no mechanism in place in England for enforcing the condition of slavery while the slave was in England. Lord Mansfield and his colleagues were only prepared to go as far as deciding on the release of Somerset, but were not prepared to extend the judgment to a declaration of emancipation of 14,000–15,000 enslaved Africans in England, considering the potential loss to the plantation owners and other factors.

The limited common law protection of enslaved Africans in England was curtailed once they returned to the jurisdiction of the colonies, where there was the mechanism for enforcing the condition of slavery. Enslaved Africans reverted to being chattels and the common law was, therefore, totally ineffectual in protecting them from apprehension in England and shipment to the colonies.

The *Somerset* decision was nevertheless a significant one in that it had a huge influence in the colonies, especially in America. It was misinterpreted by many who believed that it signified the freedom of enslaved Africans, as soon as they arrived in England and breathed its free, "pure air." It was cited as an authority in courts in England, Scotland, the West Indies, and the American colonies and assisted the campaigners for abolition of slavery.

Lord Mansfield and his colleagues, sitting in the highest common law court in England, did not, however, have the courage to use equitable principles to embellish the common law. They missed the golden opportunity of ruling that the fundamental common law principles of personal security and liberty of the individual were superior to the ordinary slave laws laid down by colonial legislatures, and that those slave laws were in breach of the common law and the rights of

127. Colin Bobb-Semple, Letter to the Editor, TIMES (London), Dec. 16, 2005, at 18.

man. The common law was found wanting, and it was not until 228 years after the *Somerset* decision that the fundamental principles of human rights (notably Article 4 of the European Convention on Human Rights) were included in English domestic law.

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