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INVITED ARTICLE

Slavery, Law, and Race in England and its New World Empire

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Holly Brewer's article "Creating a Common Law of Slavery for England and its New World Empire" addresses the scholarship on British slavery, slave codes, and the legality of chattel slavery in the seventeenth century. Brewer argues that Charles I began a process, in collaboration with his appointed judges, to legalize the buying and selling of people in England and its empire. Unlike the scholars who have shrunk from the reality of slavery's legality in England and then Great Britain in the seventeenth and eighteenth centuries, Brewer takes on this subject directly in a much-needed reconstruction of the legal precedents that transformed people into chattel, enabling the business of slavery. Brewer's analysis reveals a relentless unidirectional expansion of the legal frameworks that made "the buying and selling of slaves fully legal and enforceable across the empire" under the Stuart monarchs who "presided over a series of [judicial] rulings that made slavery more fully legal not only in England itself, but also in its empire" (p. 766). Brewer shows how these rulings "brought the phalanx of English property law to support slavery," arguing that the Stuart kings used the common law as "an instrument . . . to create new laws, in the form of new precedents, and thus to both expand their own power and to legitimate slavery" (p. 766). As a corollary, Brewer posits that opponents of the Stuarts in Parliament, many of them investors in the slave trade and owners of slaves, opposed slavery. In their pursuit of "absolutism," the Stuarts consistently promoted draconian laws upheld by royally appointed judges that legalized slavery both in England and its empire, and defined certain people as property, to be bought and sold as chattel.

Brewer shows that "people could be more completely property under the common law than under the civil law of other empires" concluding emphatically that "these courts bluntly ruled that people were property" (pp. 771–2). The rhetorical formulation "people as property" occurs throughout the article. On its face, the assertion that "[English judges] . . . rationalized an exploitative labor system highly compatible with early capitalism; indeed, they created a

kind of extreme capitalism, where even people were things" (p. 772) is certainly a true statement. But the claim that opposition to the Stuarts conveyed an opposition to slavery is unsubstantiated. The article seems to revise the history of slavery's legality in England while positing an English opposition to slavery in the seventeenth century. There is a curious assumption throughout the article that the English commodification of people could apply equally to any people. This is a color blindness that we all know was never the case.[1] As in her other work, Brewer elevates Locke and ignores race. As Sabine Broeck has argued, Locke's treatises did not have African people in mind as its rights-bearing subjects. Instead, Locke imagined white English gentlemen, many of whom owned slaves, whose rights to property his treatises protected.[2]

The common law of slavery did not emerge neatly or coherently from abstract principles of English justice: it emerged in violent collision with colonial peoples of color. Yet race does not receive any engagement as a category of analysis. The article studiously avoids the word (it appears only in the titles of books cited in the footnotes) and omits any discussion of race or the process of racialization achieved by and archived in the law. Missing is an account of the historical processes whereby laws about slavery contributed to racial formation. The article does not mention whiteness or engage with the impact of scholarship that tracks the connections among law and racial identity and degrees of freedom. Legal discussions of slavery always and only concerned people of color, so this omission is curious. Abstract principles were faux color blind; laws in Virginia and Barbados rested on legal categories such as "negro." By the eighteenth century law reinterpreted religion, nation, and other hierarchies of difference in terms of whiteness, a legal category that emerged through this process. Eighteenth-century British law defined equal protection under law as a privilege afforded to whites and one withheld from Blacks and other people of color by definition of their skin color and enslaved status. What emerges is a circular argument that allows Brewer to talk about slavery in the British Atlantic without ever talking about race.

The legal cases analyzed in the article comprise the history of these eighteenth-century developments. Through them, one can trace a preoccupation with definitions of freedom and slavery, whiteness and blackness. Despite repeated quotations from the cases that name "negros" and "Indians" as the objects of their gaze, the article implicitly adheres to an

[1] Most recently Jennifer Morgan, *Reckoning with Slavery: Gender, Kinship and Capitalism in the Early Black Atlantic* (Durham, NC: Duke University Press, 2021); and Brooke Newman, *A Dark Inheritance: Blood, Race, and Sex in Colonial Jamaica* (New Haven, CT: Yale University Press, 2018).

[2] Holly Brewer, "Slavery, Sovereignty, and 'Inheritable Blood': Reconsidering John Locke and the Origins of American Slavery," *The American Historical Review* 122 (2017): 1038–78; and Sabine Broecke, "'Never Shall We Be Slaves': Locke's Treatises, Slavery and Early European Modernity," in *Blackening Europe: the African American Presence*, ed. Heike Raphael-Hernandez (London: Routledge, 2004), 235–47, for example "the free man's right to *own himself*, to be his own person—and thus to be precisely *distinct and distinguished* from slaves who are subjected to some other party's whims and powers—is what Locke foremost among his contemporaries, articulates" at 239.

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imagined universality of equality before the law to infer that the precedents set by these cases applied to all people. But they never did for a variety of reasons.

Discretion had always played an important part in England's legal system. The universal values of liberty and equality that resounded in the press, in popular pamphlets, and in legal commentary made very little difference in English courtrooms. Instead, victims, defendants, witnesses, and lawyers made arguments about character and reputation.[3] These age-old signifiers remained the means by which communities arbitrated among those groups and individuals who would or could be reintegrated and those who would not.[4] And appearances always mattered. The reason given for the denial of defense attorneys was that innocence would and could be read in the defendant's face and words. Until the 1730s, in what John Langbein dubbed the "accused speaks trial," defendants could not call on legal representation because a prisoner's unmediated, unsworn response to the charges was considered the strongest evidence for innocence.[5] Jurors used their discretionary powers to mitigate the harshness of the law and to apply it with selective rigor or leniency.

In addition to class, age, gender, clothing, and speech, countenance and complexion were cultural signifiers, and viewers trained their eyes, keenly knowledgeable about how and where to place the object of their gaze on the social, economic, color, and cultural hierarchies that ordered their world.[6] Mark Dawson has documented the preoccupation with complexion in early modern English society. Although some would argue that race and the inferiority of people of color emerged in Britain only in the third quarter of the eighteenth century, more recent scholarship has demonstrated that bodily difference including eye color, hair texture, and skin color all drew attention and distinction in the seventeenth and eighteenth centuries, with varieties of whiteness creating a powerful measure of rank.[7]

[3] Peter King, *Crime, Justice and Discretion in England, 1740–1820* (Oxford: Oxford University Press, 2000).

[4] For more on popular literature and crime in early modern England, see V.A.C. Gatrell, *The Hanging Tree: Execution and the English People, 1770–1868* (Oxford: Oxford University Press, 1994); Andrea McKenzie, *Tyburn's Martyrs: Execution in England, 1675-1775* (London: Hambledon Contimuum, 2007); and Greg T. Smith, Allyson N. May, and Simon Devereaux, eds., *Criminal Justice in the Old World and the New: Essays in Honour of J. M. Beattie* (Toronto: Centre of Criminology, University of Toronto, 1998).

[5] John Langbein, *The Origins of Adversary Criminal Trial* (Oxford: Oxford University Press, 2003), 35–36.

[6] Commentary about the market in used clothing revealed anxiety about impostors who dressed above their station. Beverley Lemire, "The Theft of Clothes and Popular Consumerism in Early Modern England," *Journal of Social History* 24 (1990): 255–76 and Melissa Mowry, "Dressing Up and Dressing Down: Prostitution, Pornography, and the Seventeenth-Century Textile Industry," *Journal of Women's History* 11 (1999): 78–103.

[7] Mark Dawson, *Bodies Complexioned: Human Variation and Racism in Early Modern English Culture, c. 1600–1750* (Manchester: Manchester University Press, 2019). Studies of race in the early modern period include Kim Hall, *Things of Darkness: Economies of Race and Gender in Early Modern England* (Ithaca: Cornell University Press, 1995); Ania Loomba, "Periodization, Race, and Global Contact," *Journal of Medieval and Early Modern Studies* 37 (2007): 595–620; Catherine Molineux, "Hogarth's

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Although the global expansion of the British Empire coincided with a new local emphasis on rule of law and equality before the law, bound labor and persistent questions of race, gender, status, age, nation, and boundary called attention to the contradictions embodied in Enlightenment thought and its proclaimed universal values.[8] Although indenture and villeinage bore resemblance to raced and chattel slavery, they each rested on a form of consent, written or verbal. Indentures were contracted voluntarily or contracts were imposed on convicts. Often the consent of the villein or his/her family was a legal fiction, many generations in the past, but its very existence distinguished it from capture and slavery. My work has argued that the definition of a villein implied whiteness and privilege—translated into real legal privileges that included being able to take your lord to court—never imagined as belonging to or bestowed on those people defined as things. The studies of whiteness and race—from Susan Amussen, Ania Loomba, Kristen Block, Cecily Jones, and Jenny Shaw to name just a few—show the development and expansion of this category of difference and the way it was deployed to exert power and compel labor from people of color.[9] Indeed every category of difference was inflected by law with no category of difference left out of the law.

Whiteness emerged as synonymous with freedom. A slightly broader view of the legal evidence presented by Brewer reveals the unequal definition and treatment of those defined as other. In 1674, 3 years before *Butts v Penny*, Bermuda's House of Assembly passed a law (reissued in 1730) "for Extirpating all Free Negroes, Indians and Mulattoes." This legislation clearly

Fashionable Slaves: Moral Corruption in Eighteenth-Century London," *English Literary History* 72 (2005): 495–520; Jennifer Morgan, "'Some Could Suckle Over Their Shoulder': Male Travelers, Female Bodies, and the Gendering of Racial Ideology, 1500–1770," *William and Mary Quarterly* 54 (1997): 167–92; Cecily Jones, *Engendering Whiteness: White Women and Colonialism in Barbados and North Carolina, 1627–1865* (Manchester: Manchester University Press, 2007); Dror Wahrman, *The Making of the Modern Self: Identity and Culture in Eighteenth-Century England* (New Haven, CT: Yale University Press, 2004); and Roxann Wheeler, *The Complexion of Race: Categories of Difference in Eighteenth-Century British Culture* (Philadelphia: University of Pennsylvania Press, 2002).

[8] Slavery and the legal apparatus that supported it stand as one of the biggest contradictions within Enlightenment thought. For more on slavery in England and throughout the empire, see Dana Rabin, "Empire on Trial: Slavery, Villeinage and Law in Imperial Britain," in *Legal Histories of the British Empire: Laws, Engagements and Legacies*, ed. John McLaren and Shaunnagh Dorsett (New York: Routledge, 2014), 203–17; and Kenneth Morgan, *Slavery and the British Empire: From Africa to America* (Oxford: Oxford University Press, 2007). For slavery and law in France and its empire, see Malick Ghachem, "Montesquieu in the Caribbean: The Colonial Enlightenment between 'Code Noir' and 'Code Civil,'" *Historical Reflections* 25 (1999): 183–210; Malick Ghachem, *The Old Regime and the Haitian Revolution* (Cambridge: Cambridge University Press, 2012); and Sue Peabody, *There Are No Slaves in France: The Political Culture of Race and Slavery in the Ancient Regime* (Oxford: Oxford University Press, 1996).

[9] Susan Amussen, *Caribbean Exchanges: Slavery and the Transformation of English Society, 1640–1700* (Chapel Hill, NC: University of North Carolina Press, 2007); Kristin Block, *Ordinary Lives in the Early Caribbean: Religion, Colonial Competition, and the Politics of Profit* (Athens, GA: University of Georgia Press, 2012); Jones, *Engendering Whiteness*; Loomba, "Periodization"; and Jenny Shaw, *Everyday Life in the Early English Caribbean: Irish, Africans, and the Construction of Difference* (Athens, GA: University of Georgia Press, 2013).

attempted to eliminate any confusion about the lines of color and freedom by simply expelling all free people of color within 6 months of their emancipation.[10] The legal architecture established this equation of whiteness and freedom, with freedom accessible only to certain people. The English legal process sustained distinctions of race, ethnicity, gender, and class before the law, repeatedly and regularly creating and protecting whiteness as a privileged category. Discourses of whiteness emerged at the intersection of discourses of class, gender, sexuality, ethnicity, and religion and signaled the extent to which people were thought to be either eligible for the rights and privileges of belonging, or resources to be enslaved as chattel.[11]

Some eighteenth-century legal commentators and historians cite what I will call the "Repugnance Doctrine" to explain the inconsistencies or contradictions between laws in the colonies and those of the metropole. They have often accounted for the erratic, vague, and inconsistent application of legal precepts in the colonies as aberrant discrepancies, contradictions of metropolitan practices, or the result of legal pluralism.[12] Brewer asserts that British law and its embrace and acceptance of slavery and its legality was of a coherent and consistent whole. The article's protagonists, merchants and monarchs, privy counselors and judges, worked together in a concerted and public effort to ascribe to human beings all the key attributes of property in order to facilitate payment and credit in human beings.

Brewer's evidence demonstrates how empire, race, law, and slavery were co-constituted: law was made in the violent clashes of imperial expansion. Britain's imperial nodes and the legal infrastructures, grafted into the colonies, developed law and policy, a common law of slavery. Although the metropole may have been imagined as the exclusive producer and giver of law, the colonial legislatures and their governors made law and fed it back to London or across the imperial web to other colonial sites as slave law moved from the

[10] Michael Craton, James Walvin, and David Wright, eds., *Slavery, Abolition and Emancipation: Black Slaves and the British Empire* (New York: Longman, 1976), 180.

[11] For the treatment of non-white defendants in English court, see Peter King, "Ethnicity, Prejudice, and Justice: The Treatment of the Irish at the Old Bailey, 1750–1825," *The Journal of British Studies* 52 (2013): 390–414; and Peter King and John Carter Wood, "Black People and the Criminal Justice System: Prejudice and Practice in Later Eighteenth- and Early Nineteenth-Century London," *Historical Research* 88 (2015): 100–24.

[12] Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (Cambridge: Cambridge University Press, 2010); Eliga Gould, "Zones of Law, Zones of Violence: The Legal Geography of the British Atlantic, circa 1772," *William and Mary Quarterly* 60 (2003): 471–510; James Epstein, *Scandal of Colonial Rule: Power and Subversion in the British Atlantic during the Age of Revolution* (Cambridge: Cambridge University Press, 2012); Paul Halliday, *Habeas Corpus: From England to Empire* (Cambridge, MA: Harvard University Press, 2010); and P. J. Marshall, "Britain and the World in the Eighteenth Century: IV, The Turning Outwards of Britain," *Transactions of the Royal Historical Society* 11 (2001): 1–15. The legal relationship between colony and metropole was pioneered by Jack P. Green, *Peripheries and Center: Constitutional Development in the Extended Polities of the British Empire and the United States, 1607–1788* (Athens, GA: University of Georgia Press, 1986); and Mary Sarah Bilder, *The Transatlantic Constitution: Colonial Legal Culture and the Empire* (Cambridge, MA: Harvard University Press, 2004).

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Bahamas, to Barbados, Virginia, South Carolina, and Jamaica.[13] Sometimes this happened with metropolitan consultation and support, sometimes due to metropolitan neglect, and sometimes in direct contradiction of metropolitan instructions. Colonial subjects, the enslaved, and indigenous people alike, participated in this process as they resisted, lived within, and assimilated to Britain's imperial presence. This is not a story that unfolded exclusively in the high courts at Westminster. The networks of empire and their legal arrangements each contributed to the expansion of enslavement and the slave trade. The *Butts v Penny* case is just such an example as is Holt's unofficial advice to the plaintiff, Smith, in *Smith v. Brown and Cooper* (p. 822).

Brewer's discovery of slavery in the common law of property is undermined by the article's insistence that these cases and their outcomes are all an extension of absolutist rule. For Brewer, slavery is an "original sin" for which the Stuarts ought to be blamed.[14] Brewer's argument presents us with a false syllogism, debunking one myth only to uphold another. Her emphasis overlooks or hides the fact that there was no profound difference between the Stuarts and their opponents regarding the legal and acceptable nature of chattel slavery. In addition to buying all of Bristol slave trader Edward Colston's shares in the Royal African Company (RAC), William III became governor of the RAC when he became king. The resistance to Charles and the Stuarts did not manifest itself as a repudiation of chattel and raced slavery or to the growing slave trade. Supporters of William III enthroned a monarch with significant ties to chartered slave trading companies.

Brewer cites Parliament's resistance to the Stuarts as evidence of anti-slavery sentiment and action. This is simply not convincing given what we know about opposition to Charles II and James II and the eventual exclusion of James and his heirs. It is quite a mistake to conflate Parliament's opposition to the Stuarts with any broader anti-slavery or abolitionist sentiment or policy.[15] As Melissa Mowry has argued, "absolutism is too narrow a lens to account for the cultural and imaginative shifts as Britain transitioned to monarchy after the Restoration." These cultural shifts that took place in the late seventeenth century encompassed tremendous changes across social, political, economic, and intellectual spheres that co-constituted each other, promoting an acceptance of compelled, enslaved labor, unrestrained search for profit, and the idea that Black people could be bought and sold as property.[16]

Radical thought during the English Civil War had defined tyranny as synonymous with slavery. A just polity had no slaves; under tyranny, attempts to make slaves justified the existence of rightful resistance, both expected and accepted. During the Restoration, as chattel slavery was legislated and the

[13] Edward Rugemer, *Slave Law and the Politics of Resistance in the Early Atlantic World* (Cambridge, MA: Harvard University Press, 2018).

[14] It is in this same spirit of blaming the Stuarts that Brewer finds redemption for John Locke and the Whigs. Brewer, "Slavery, Sovereignty, and 'Inheritable Blood.'"

[15] The work of Ruth Paley, Cristina Malcolmson, and Michael Hunter in "Parliament and Slavery, 1660–1710," *Slavery and Abolition* 31 (2010): 257–81, presents evidence of a discussion of slavery in Parliament that does not constitute anti-slavery sentiment or policy.

[16] Conversation with Melissa Mowry, January, 2022.

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British slave trade expanded, this pairing of tyranny and slavery severed. The meaning of a just society was redefined so that the equation of a just polity coexisted with, accommodated, and promoted chattel slavery and the slave trade.[17] Indeed, race was created to resolve this contradiction. It was in this context that the ideology of rule of law expanded, and Brewer traces the cases through which this cultural and ideological change was manifested. Slavery came to define African identity; freedom was the natural condition of whiteness. Racialization was at the core of this historical development. Race was a "feature, not a bug" of Lockean society post-1688.

In the eighteenth century, the legal apparatus promoted the ambiguity around Britain's law of slavery. This was probably the only way to ensure the growth of the slave trade and its profits while simultaneously sustaining the illusion of Britain's claim of equality before the law. When he heard the case of *Rex v. Stapylton* in 1771, William Murray, 1st Earl of Mansfield (1705–93) contributed to the misapprehension surrounding the question of slavery's legality in England addressed in Brewer's article.[18] The case involved a self-emancipated slave, Thomas Lewis, seized by slave catchers on the orders of Robert Stapylton, restrained on the *Captain Seward* at Gravesend, and bound for the slave market in Jamaica. When he declared that "the general question may be a very important one, and not in this shape ever considered that I know of" and that "whether they have this kind of property or not in England [has] never been solemnly determined," Mansfield intentionally acted to keep the question open and the answer undecided. After these provocative remarks, Mansfield "left to the Jury to find whether the Negro [was] the slave and property of Defendant Stapylton," making it a narrow question of one enslaved person and an individual owner rather than slavery's legality. The case resolved when the jury found that Lewis did not belong to Stapylton.[19]

Mansfield sought to avoid making the question of slavery's legality in Britain the focus of the trial. He said as much when he reportedly told John Dunning (1731–83), who served as counsel for Lewis, that

> There are a great many opinions given upon it [i.e. the legality of slavery in England]; I am aware of many of them: *but perhaps it is much better it should never be finally discussed or settled* [italics are mine]. I don't know what the consequence may be, if the masters were to lose their property

[17] Melissa Mowry, *Collective Understanding, Radicalism, and Literary History, 1645–1742* (Oxford: Oxford University Press, 2021),154, 170.

[18] *Somerset v Stewart* was neither the first nor the last case in which Mansfield was confronted with the subject of slavery. On Mansfield's subsequent and most famous case, see Ian Baucom, *Specters of the Atlantic: Finance Capital, Slavery, and the Philosophy of History* (Durham, NC: Duke University Press, 2005); Jeremy Krikler, "The Zong and the Lord Chief Justice," *History Workshop Journal* 64 (2008): 29–47; and Anita Rupprecht, "Excessive Memories: Slavery, Insurance and Resistance," *History Workshop Journal* 64 (2008): 6–28.

[19] James Oldham, *The Mansfield Manuscripts and the Growth of English Law in the Eighteenth Century*, 2 volumes (Chapel Hill, NC: University of North Carolina Press, 1992), 2:1225–26 and 2:1242–43. The details of the case along with some of the relevant primary sources are recounted by Prince Hoare in *Memoirs of Granville Sharpe* (London: H. Colburn, 1820), 52–61.

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> by accidentally bringing slaves to England. I hope it never will be finally discussed; for I would have all masters think them free, and all Negroes think they were not, because then they would both behave better.[20]

Mansfield favored a vague settlement that encouraged neither the pro-slavery forces nor the abolitionists. Rather than citing Holt's decisions in 1697, 1701, and 1706 or the Yorke-Talbot opinion of 1729 that had declared that a slave's arrival in Great Britain had no liberating effect and no impact on a master's rights to his property, Mansfield reframed the evidence of slavery's legality in England as inconclusive.[21] Mansfield's words and his avoidance of a decision on the question at hand demonstrates his toleration of commodity slavery rather than law and order. He supported an ambiguous lawlessness rather than disrupt the order of slavery.

As I have argued elsewhere, Britain's imperial expansion depended on its law to manage interactions among peoples and cultures, linking metropole and colonies in a vast imperial legal web.[22] As Britain's empire expanded in the seventeenth and eighteenth centuries, the rule of law—the principles that all are subject to publicly disclosed laws, that all are equal before the law, and that no one is above the law—became Britain's signature ideology, and a central justification for its imperial authority and superiority.[23] This emphasis on equality before the law in an age of imperial expansion was no coincidence. Common English men and women were bestowed—discursively at least—with rights and equality at the very moment that English law turned Black and Native people into property.

Brewer states forthrightly what legal scholars have been hesitant to say: slavery was indeed legal in England, made legal by precedents in a series of significant seventeenth-century cases presided over by Stuart-appointed judges. With Brewer's evidence so clear, and the flourishing of the slave trade so obvious, why would historians argue otherwise? Although the article does not probe how and why this mistaken interpretation of Britain's legal history of slavery developed among both British jurists and historians and its persistence in contemporary analyses, I would argue that this is more than a historiographic accident. Formulating a seeming disjuncture between English law and chattel slavery was an absolute necessity that reveals the very success of the fiction of rule of law, both in the seventeenth and eighteenth centuries,

[20] Hoare, *Memoirs*, 59.

[21] This "opinion," known as Yorke-Talbot, was rendered over coffee at Lincoln's Inn while the judges were in conversation with West Indian planters. Yorke's decision in *Pearne v. Lisle* is found in *Reports of cases argued and determined in the High Court of Chancery, with some few in other courts. By Charles Ambler, ...* (London: T. Whieldon, 1790), 75 and in 27 *English Law Reports*, 47 (1749).

[22] Dana Y. Rabin, *Britain and Its Internal Others, 1750–1800: Under Rule of Law* (Manchester: University of Manchester Press, 2017), 1.

[23] William Blackstone describes the attributes of English law and its emancipatory power throughout the four volumes of his *Commentaries on the Laws of England*, first published in 1765–69 (Chicago: University of Chicago Press, 1979), but especially in 1:6, 63–64, 120, 136, 156. Blackstone concludes that together, written and unwritten law made up England's constitution whose "very end and scope" Blackstone proclaimed was "political or civil liberty."

as well as today. E.P. Thompson's conclusion to *Whigs and Hunters* (1975) articulates the hold that the ideology of equality before the law has had on legal scholars no matter their political orientation.[24] That ideology provided a justification for Britain's imperial expansion and the persistence and success of its identity as lawgiver, expelling from its legal history the violent and lawless legacies of raced and chattel slavery, land appropriation, and brutal oppression.

Brewer argues for contingency when she explains (p. 831) that

> So, although we know the outcome, the shape of "American slavery" was not pre-determined. In all these cases, while one side claimed "negroes" as slaves, the alleged slaves had protectors. These protectors baptized them (in hopes that it would help them obtain freedom), funded them, propelled their cases before the high court, and paid lawyers who argued on their behalf against basic principles of slavery and sale. These cases display—especially in a context where power was so intertwined with slavery—the shape of the debate over fundamental questions of justice and morality during this period, assumed to be a time when no one questioned principles of enslavement. But of course they did. That is a crucial explanation for why slavery and servitude itself evolved differently in different colonies and in England itself and over time.

Brewer provides little evidence to substantiate the claim that the enslaved had protectors in the seventeenth century nor does the article present examples of those protectors who ushered these cases to the high court in the period when law made Black people and other people of color into property. This quotation conceals the role of the Whigs in building and promoting British slavery during the period.

More problematic are the exclusively white and male, English or colonial subjects who people Brewer's examination and are its only agents. Brewer obscures the role of the enslaved themselves whose constant resistance and attempts to free themselves reversed by its very existence the dehumanized status ascribed to them as Africans, Negroes, and Indians. It was their human agency that fueled the anti-slavery and abolitionist movements.[25] The focus on "protectors" who helped them erases the initiative taken by the enslaved to resist enslavement and assert their humanity. Moreover, as Christopher Brown and others have shown, there is scant evidence of any anti-slavery sentiment, policy, or legislation among white English people before the late eighteenth century.[26] Brewer's disregard for race obscures the power dynamics at work among and between the enslaved people of color and

[24] E. P. Thompson, *Whigs and Hunters: The Origins of the Black Act* (New York: Pantheon Books, 1975), especially 258–69.

[25] For more on the active role of the enslaved in their self emancipation, see Douglas Lorimer "Black Slaves and English Liberty: a Re-examination of Racial Slavery in England," *Immigrants and Minorities* 3 (1984): 121–50.

[26] Christopher Brown, *Moral Capital: Foundations of British Abolitionism* (Chapel Hill, NC: University of North Carolina Press, 2006).

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their owners, those who defended slavery and those who championed abolition, and those who arbitrated these discussions in court, at royal court, and in the crucibles of bondage and resistance throughout the Empire. This was not a status shared universally, and ignoring that fact does violence to the memory of those who suffered.

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