Bondage Compounded: Capital, Common Law, and the Constitutionality of American Slavery

The legal, economic, and philosophical genesis of chattel slavery in British North America, alongside its subsequent codification within the constitutional framework of the United States, represents one of the most fiercely contested battlegrounds in modern legal historiography. For generations, an idealized, neo-Whig narrative dominated the American academy. This perspective framed early American slavery as a localized, tragic aberration—a provincial anomaly that the Founders reluctantly tolerated within a broader, liberty-loving Anglo-American legal tradition. In this view, the common law was inherently pure, the imperial center was largely indifferent, and the ultimate consolidation of human bondage was an accidental byproduct of frontier pragmatism and southern geographic determinism.

Modern revisionist scholarship has thoroughly shattered this exceptionalist myth. Yet, within this critical turn, a profound and sophisticated debate has emerged regarding the precise legal mechanisms through which human beings were reduced to commodified capital. At the epicenter of this discourse is a fundamental clash between the models of **Holly Brewer** and **Larry Kenneth Alexander**.

- **Holly Brewer** presents a thoroughly historicized, archival model of legal realism. She posits that chattel slavery was an intentional, top-down imposition of the British imperial state. According to Brewer, the Crown and its high-court judges systematically altered and weaponized English common law to create an empire-wide infrastructure of property rights in human beings.
- **Larry Kenneth Alexander** approaches the archive through a formalist, macro-constitutional framework. He contends that because pure English common law never positively authorized or recognized chattel slavery, the entire plantation complex operated as an extra-legal, "continuing criminal enterprise," dating back to the Declaratory Act of 1766 and affirmed by *Rex v. Stapylton* (1771). In Alexander's view, the American Revolution was not a progressive leap for human liberty, but a preemptive coup orchestrated by colonial elites to escape the jurisdiction of British courts that were on the verge of declaring their human property illicit.

To fully understand this debate, one must contextualize it within a broader historiographical spectrum. The constitutional analysis of **Paul Finkelman** demonstrates how the 1787 U.S. Constitution served as a positive-law fortress designed specifically to shield this enterprise. The political history of **James Brewer Stewart** illuminates how "sectional comity" turned the new republic into a national enforcement mechanism for human bondage. The social history of **Ira Berlin** traces the

material transformation of the colonies from "societies with slaves" into rigid, all-encompassing "slave societies."
Finally, the economic analysis of **Walter Greason** reveals how the American legal system engineered an inversion of Enlightenment ideals, establishing a doctrine of *real property supremacy* where the right to accumulate capital permanently overrode the right to human personhood. This framework finds its clearest, most devastating historical expression in the post-Revolutionary process of "gradual emancipation" in the American North—a half-century regime of legal arbitrage where northern enslavers systematically liquidated their human assets, trafficking thousands of Black Americans into the Deep South to build the foundations of modern American capitalism.

The Foundations of Enslavement and Jurisprudence

The Ancient Constitution and Common Law Maxims

The conceptual foundation of Larry Kenneth Alexander's formalist thesis in *King's Native Sons: Lies, Lessons and Legacies* rests upon the absolute inviolability of the "Ancient Constitution" and the traditional maxims of English common law (specifically under the Magna Carta and the English Bill of Rights [1689]). Alexander argues that the common law was not a neutral, infinitely malleable instrument of state power, but a coherent moral and logical system fundamentally structured around the protection of individual liberty, allegiance to the sovereign, and the preservation of due process. Central to this system was the doctrine of birthright subjecthood: any individual born within the territorial dominions of the British monarch was, by operation of law, a natural-born subject. This subjecthood established a reciprocal legal bond wherein the subject owed allegiance to the Crown, and the Crown owed the subject protection under the law.

Because English common law was built upon custom, immemorial usage, and judicial precedent, it possessed no internal mechanism to recognize the total erasure of a subject's legal personhood. For a human being to be transformed into chattel—a fungible piece of property devoid of civic rights, capable of being bought, sold, inherited, and seized for the satisfaction of commercial debts—the law required an explicit, positive statutory decree. In the absence of an Act of Parliament authorizing such a transformation, the common law naturally operated as a shield for personal liberty. This principle was forcefully articulated by the High Courts of London long before the revolutionary crisis. In the landmark case of *Smith v. Gould* (1706), Chief Justice John Holt directly confronted the attempt by mercantilist interests to bring the logic of colonial plantation slavery into the domestic realm of England:

"By the common law no man can have a property in another... for a man cannot be an asset for a debt unless it be by positive custom or statute."

Alexander's thesis uses Chief Justice Holt's ruling as a foundational constitutional truth. If the common law naturally rejected the commodification of the human body, then every

African born within the boundaries of British North America was legally a birthright British subject—"the King's native son" or daughter. Under this strict constitutional logic, the local statutes passed by colonial assemblies in Virginia, Maryland, or the Carolinas that stripped Black Americans of their rights were not legitimate laws; they were flagrant, unconstitutional usurpations of royal authority and deep violations of the supreme law of the Empire.

This ideology of common law liberty was not confined to radical legal theorists; it was taught as standard doctrine to every lawyer across the transatlantic British world through Sir William Blackstone's foundational *Commentaries on the Laws of England* (1765). Blackstone wrote:

"The spirit of liberty is so deeply implanted in our constitution, and rooted even in our very soil, that a slave or a negro, the moment he lands in England, falls under the protection of the laws, and with regard to all natural rights becomes eo instanti a freeman."

For Alexander, Blackstone's treatise represents the definitive proof that the overarching British legal framework was structurally hostile to human bondage. The existence of the plantation system did not reflect the law of the Empire; it reflected an ongoing, systemic evasion of that law. Slavery was a corporate racket, a continuous criminal enterprise that persisted only because of geographic distance and the institutional corruption of colonial officials who refused to grant their captive populations access to the foundational common law writ of *habeas corpus*.

The Imperial Transmutation: Brewer's Archive of Property and Debt

Holly Brewer's *Creating a Common Law of Slavery for England and its New World Empire* directly challenges Alexander's formalist model. Brewer argues that treating the common law as an uncorrupted, naturally liberty-loving system is a historical fiction. The common law was not a static, pristine moral code; it was a deeply flexible, evolutionary system that was actively rewritten, manipulated, and weaponized by the imperial state to facilitate the rise of global transatlantic capitalism. Where Alexander sees a criminal enterprise operating *in defiance* of the law, Brewer sees an official enterprise operating *through* the law.

Brewer's research shifts the analytical focus away from abstract constitutional maxims and down into the operational archives of the British imperial state: the handwritten notes of high-court judges, the dockets of the Court of King's Bench, the minutes of the Privy Council, and the records of the Board of Trade. She demonstrates that during the seventeenth and eighteenth centuries, the British monarchy—particularly under the Stuart kings Charles II and James II—embarked on a deliberate policy to integrate the slave trade into the legal fabric of the empire.

The driving force behind this legal engineering was financial and political absolutism. By establishing royal monopolies over the slave trade, most notably through the Royal

African Company (RAC), the Stuart monarchs generated massive streams of revenue that were completely independent of Parliamentary oversight. To protect these lucrative investments, the Crown utilized its power to appoint high-court judges who would systematically alter judicial precedents to favor the commodification of human beings. Brewer reveals that English judges deliberately created new legal fictions within the common law to treat enslaved people as property. They did this by allowing actions of *trover* (lawsuits to recover value for converted property) and *replevin* (actions to recover specific goods) to be used for Black laborers. By ruling that an English merchant could sue another merchant in London for the value of a "negro," the high courts effectively integrated human property into the domestic common law of commerce. The imperial bureaucracy guarded this legal infrastructure from any interference by local colonial legislatures. For example, in 1747, the Board of Trade explicitly reasserted the primacy of the slave trade over local colonial governance, writing in its official colonial journals: "The trade to Africa is of the greatest importance to these kingdoms, and the plantation trade depends upon it... No colonial assembly should pass laws which impede the recovery of debts due to British merchants, or impair their property in negroes."
This administrative directive exposes the profound flaw in the traditional argument that slavery was purely a localized, southern colonial creation. The Board of Trade made it clear that human beings were fundamentally categorized as "property" because they served as the primary collateral backing the transatlantic credit networks linking London merchants to tobacco and sugar planters. All of this official work reveals the difficulty of declaring enslavement legal under Common Law.

This policy of top-down legal enforcement continued up to the eve of the American Revolution. In 1770, when colonial assemblies attempted to pass taxes or restrictions on the importation of enslaved Africans—largely out of fear of slave insurrections—the Crown intervened. In the official royal instructions issued to Virginia Governor Lord Dunmore in 1770, the King declared:

"...You are not to give your assent to any law or laws... whereby the trade or shipping of this kingdom may be affected, or more particularly, any duties or prohibitions upon the importation of Negroes."

Brewer’s archival evidence shows that the legal architecture of enslavement in British North America was engineered by the highest authorities in London. The Crown used its prerogative to bind colonial legal systems, enforcing an imperial mandate that no colonial law could be "repugnant" to the commercial laws of England. Thus, the horrific slave codes regarding the trade in Africans that passed in Williamsburg or Charleston were structurally supported by, and designed to conform to, a foundational imperial common law designed in Great Britain to protect mercantile wealth at all costs.

The Somerset Crisis

Deconstructing *Somerset v. Stewart* (1772)

The structural tension between the commercial laws of the British Empire and the traditional liberty rhetoric of English common law reached a breaking point in 1772. The catalyst was the landmark case of *Somerset v. Stewart*, a legal battle that brought the core contradictions of the imperial system directly into the Court of King’s Bench in London. James Somerset, an enslaved African man, had been brought from Virginia to England by his master, Charles Stewart, a customs officer. While in England, Somerset escaped, was recaptured, and was delivered onto a ship bound for Jamaica, where he was to be sold into the brutal sugar plantations. Abolitionist legal advocates, led by Granville Sharp, intervened, securing a writ of *habeas corpus* that forced Captain John Knowles to bring Somerset before Lord Chief Justice William Mansfield to justify his detention.

The transcripts and legal briefs of the *Somerset* case reveal a desperate battle over the foundational nature of British law. The defense, representing the financial interests of West Indian and North American slaveholders, rested their entire argument upon the commercial reality highlighted by Holly Brewer. Led by Solicitor General Alexander Wedderburn, the defense argued that the high courts could not ignore the immense economic infrastructure that sustained the British state. Wedderburn argued:

"The value of our plantations depends upon their being cultivated by slaves... If you destroy this property, you destroy the trade of Great Britain. The law of commerce must protect what the commerce has created."

Wedderburn’s argument was an open acknowledgment of the material reality of the British Empire: the law of commerce was the true master of the constitution. He reminded Lord Mansfield that English merchants held millions of pounds in debts secured entirely by the value of enslaved human beings, and that a ruling in favor of human liberty would destabilize the transatlantic credit market.

Against this commercial realism, Granville Sharp and Somerset’s legal team mobilized the formalist common law principles championed by Larry Alexander. Sharp argued that the common law was supreme over mercantile interest, and that the Magna Carta made no distinction based on race. In his highly influential 1769 legal pamphlet, *A Representation of the Injustice and Dangerous Tendency of Tolerating Slavery*, Sharp wrote:

"No individual can be deprived of his liberty without due process of law... Every person born within the King's dominions is a natural-born subject, and to hold such a person in open slavery is an open violation of the Great Charter of our liberties."

Faced with these two irreconcilable legal arguments, Lord Mansfield delayed his decision for months, desperately attempting to force the parties to settle out of court to avoid a constitutional crisis. Mansfield understood that he was trapped between the purity of common law rhetoric and the material dependence of the empire on human trafficking. When a settlement proved impossible, Mansfield issued his historic, highly reluctant verdict on June 22, 1772. He stated:

"The state of slavery is of such a nature, that it is incapable of being introduced on any reasons, moral or political; but only positive law... It is so odious, that nothing can be suffered to support it, but positive law. Whatever inconveniences, therefore, may follow from a decision, I cannot say this case is allowed or approved by the law of England; and therefore the black must be discharged."

Mansfield's ruling, on behalf of the King's Bench of twelve judges, was a masterclass in judicial evasion, yet it inadvertently confirmed the core arguments of both modern historians. In validating Alexander's formalist model, Mansfield admitted that chattel slavery had no natural foundation in English common law, explicitly branding the institution as "so odious" that it could not be supported without an express statutory act of Parliament. However, to mitigate the "inconveniences" feared by the commercial class—the potential loss of millions of pounds in slave assets—Mansfield intentionally narrowed the scope of the ruling. He did not abolish slavery across the British Empire; he merely ruled that within the domestic realm of England, an enslaver could not forcibly seize and deport an individual. The ruling left the legal status of slavery in the colonies untouched on paper, but it sent a shockwave through the transatlantic plantation economy.

Alexander's Thesis: The Preemptive Imperial Coup

For Larry Kenneth Alexander, the *Somerset* decision is the ultimate historical proof of his thesis based on a series of rulings from the American Colonies Act (1766), the *Stapylton* decision (1771), the *Somerset* decision (1772), and *Campbell v. Hall* &1774). By declaring that slavery could not exist without positive law, the Court of King's Bench effectively exposed the entire colonial slave system as a constitutional fraud. The ruling meant that every southern planter holding Black Americans in bondage was doing so in violation of the imperial constitution. Although Mansfield tried to limit the ruling to England, colonial elites immediately recognized that the legal foundation of their wealth had been fundamentally undermined.

Alexander argues that this judicial crisis was the primary catalyst for the American Revolution in the American South. The traditional narrative that wealthy planters like George Washington, Thomas Jefferson, and Patrick Henry revolted over a minor tax on tea or stamp duties is logically hollow when weighed against the existential threat posed by *Somerset*. These elites recognized that if British common law courts began extending their jurisdiction to the colonies, any enslaved person could secure a writ of *habeas corpus*, walk into a royal court, and demand their freedom based on their status as birthright subjects of the King.

This panic is documented in the personal correspondence of the southern gentry immediately following the *Somerset* verdict. Writing to Patrick Henry in 1773, Virginia planter George Mason explicitly warned of the catastrophic implications of British judicial overreach:

"If the courts in Great Britain shall extend their jurisdiction to the colonies in the matter of our laborers, the title to our property will be rendered wholly insecure. We must look to our own assemblies to protect us from such determinations."

Mason's letter supports Alexander's thesis. The primary "tyranny" that southern planters feared from Great Britain was not taxation without representation; it was **imperial emancipation**. The talk of "liberty" and "rights" that filled the air in Virginia in the early 1770s was an ideological screen. The American Revolution in the South was a defensive, preemptive coup designed to sever connections with a hostile British high court and preserve a highly lucrative, illegal criminal enterprise from judicial destruction. There was no positive law authorizing enslavement. The Afro-Englishmen in 1776 retained their natural rights under Common Law, and the putative "white Americans" who denied British subjects due process between 1781 and 1865 consistently violated their own professed principles as well as the legal foundations of their new nation.

Gerald Horne and The 1619 Project

This legal-formalist reading of the Revolution aligns closely with the geopolitical and structural models developed by other revisionist scholars, most notably **Gerald Horne** in *The Counter-Revolution of 1776* and **Nikole Hannah-Jones** in *The 1619 Project*. Together, these works form a cohesive paradigm shift that reinterprets the birth of the United States.

Gerald Horne expands Alexander's domestic legal analysis by placing it within a global geopolitical context. Horne argues that by the 1770s, the British Empire was facing severe imperial strains and a mounting threat from rival European powers like Spain and France, alongside continuous internal slave rebellions across the Caribbean. To stabilize the empire, London was increasingly open to restructuring its relationship with Black populations, viewing them as potential military assets to check the growing insubordination of white mainland colonists.

The turning point came in November 1775, when Virginia's Royal Governor, Lord Dunmore, issued his famous proclamation declaring martial law and offering freedom to any enslaved person owned by revolutionaries who fled to fight for the British Crown. For the white colonial elite, Dunmore's Proclamation was the ultimate validation of their worst fears: it proved that the British state was willing to mobilize the "King's native sons" against their masters. The Revolution, therefore, became a racial counter-revolution—a war waged to defend white supremacy and human property against an imperial alliance between the Crown and African Americans.

Nikole Hannah-Jones brought this historical framework into modern public discourse through *The 1619 Project*. Her central assertion—that one of the primary drivers of the decision to declare independence was the preservation of slavery—provoked fierce backlash from traditionalist historians, yet it is fully supported by the legal and archival insights of Alexander, Brewer, and Horne. Hannah-Jones synthesized these academic insights to demonstrate that the American republic was structurally compromised from its inception. By tracing the line from the *Somerset* panic to independence, *The 1619 Project* illustrates how the United States was constructed as a defensive fortress for human bondage, meaning that modern structural racism is not an accidental deviation from the founding principles, but a direct legacy of the preservation of that initial criminal enterprise.

Codifying the Cartel – The Constitutional Settlement

The Mechanics of Liberation Laundering (1776–1781)

Following the Declaration of Independence in 1776, the victorious American revolutionaries faced the immediate task of rebuilding a legal infrastructure to replace the shattered authority of the British Crown. Under Larry Alexander's framework, this period represents the phase where the colonial elites moved to "launder" their illicit human titles. Having successfully usurped the jurisdiction of the British common law courts (while also preserving its logics beyond the consideration of enslavement), the newly independent states acted through their provincial assemblies to write new state constitutions and statutory slave codes.

Between 1776 and 1781, states like Virginia, Maryland, and the Carolinas passed comprehensive legislation designed to do what the British Empire had refused to do: provide explicit, positive-law legitimacy for chattel slavery. These state-level statutes retroactively validated the titles held by slaveholders, effectively declaring that what had been an extra-legal, rogue practice under the British Constitution was now the sovereign law of independent American states. This legal laundering created a localized vacuum where the traditional common law right to due process was systematically stripped from Black Americans, ensuring that their status as property overrode any claim to natural or civic rights.

Finkelman's Pro-Slavery Constitution: The Positive Law Fortress

This process of state-level laundering culminated at the 1787 Constitutional Convention in Philadelphia. While traditionalist myths frame the U.S. Constitution as a neutral or anti-slavery document that reluctantly tolerated the institution for the sake of national unity, Paul Finkelman's exhaustive legal analysis proves the opposite. In works such as *Slavery and the Founders: Dilemmas of Liberty and Race*, Finkelman demonstrates that the Framers intentionally designed the U.S. Constitution to serve as an impregnable federal fortress protecting the institution of chattel slavery.

Finkelman identifies up to eighteen specific clauses within the Constitution that directly protected or politically subsidized the slaveholding interest. The most structurally significant of these was the **Three-Fifths Clause (Article I, Section 2)**. This clause granted slaveholding states inflated representation in the House of Representatives and the Electoral College by counting three-fifths of their captive populations for political allocation. This compromise gave the southern plantation elite an institutional veto over the federal government, ensuring they would dominate the presidency, the Supreme Court, and the speakership of the House for the next sixty years.

The material baseline of this constitutional settlement was articulated during the debates by the delegates themselves. On August 21, 1787, Charles Pinckney of South Carolina directly addressed the convention, dismissing any abstract philosophical concerns about human rights in favor of raw economic realism:
"If the Southern States are to be agreed to a Federation, their property must be secure. South Carolina and Georgia cannot do without slaves. As to Virginia, she will gain by stopping the importations... but we must have them. The right to property is the first object of society."

Pinckney's speech captures the core transition from British imperial governance to American positive law. He asserted that the primary purpose of the new American state was not the defense of universal human liberty, but the absolute preservation of property rights—specifically property in human beings.

The Framers responded to this demand by constructing the **Fugitive Slave Clause (Article IV, Section 2)**, which created an interstate protection racket for the slave system. The clause mandated that any person held to service or labor who escaped into a free state had to be delivered up on the claim of the master. This clause bypassed traditional common law due process protections; it stripped accused runaways of the right to a jury trial, denied them the right to testify in their own defense, and effectively forced free states to act as complicit capture agents for southern human property.

The Erasure of the Subject: The Semantic Camouflage of 1787

One of the most striking features of the 1787 Constitution—and one that directly supports Larry Alexander's "criminal enterprise" thesis—is the calculated omission of the words "slave," "slavery," or "negro" from the text. Instead, the Framers utilized complex, sanitized euphemisms, referring to enslaved people as "three fifths of all other Persons" or "Persons held to Service or Labour."

Alexander argues that this deliberate inaction was a classic public relations cover-up, a manifestation of the "code of silence" typical of a consolidating syndicate. The Framers were hyper-aware of the profound hypocrisy of their position. Having just waged a bloody war for independence using the language of universal natural rights, they knew that explicitly enshrining human chattel bondage in their founding document would expose their new nation to international scorn. By using semantic camouflage, they attempted to preserve the public-facing myth of American liberty while structurally embedding the material reality of human property into the machinery of the state.

Institutionalizing the Slave Society

This constitutional settlement established what James Brewer Stewart calls **"sectional comity"**—a binding political agreement between northern mercantile elites and southern planters to treat the master's property right as absolute and untouchable to preserve the Union. Stewart illustrates that this comity corrupted the legal and political culture of the early republic. It created an environment where any legal challenge to slavery, or any attempt to grant Black Americans due process, was instantly branded as a treasonous threat to national stability.

This institutionalization matches the socio-economic evolution detailed by Ira Berlin in *Many Thousands Gone*. Berlin argues that during this post-Revolutionary window, the United States completed its tragic transition from a series of "societies with slaves" into a unified, continental **"slave society."** In the early colonial era, the "Charter Generations" of Black Americans operated within a fluid labor market where they could occasionally access courts, purchase their freedom, and assert a degree of legal personhood.

However, with the rise of the "Plantation Generations" and the economic boom triggered by the invention of the cotton gin, the legal system hardened. The constitutional protections engineered in 1787 turned slavery into the defining engine of the American economy. As cotton became the nation's dominant export, the flexible legal spaces of the eighteenth century were crushed, and the complete denial of due process to Black Americans became a structural necessity to protect the soaring value of human capital.

The Illusions of Freedom

A Critique of Racial Capitalism: Inverting the Inalienable

To understand how the tension between personhood and property operated outside the American South, one must look to the pioneering work of **Walter Greason** on the history of racial capitalism. Greason shifts the historical lens to the North, demonstrating that the northern states were not innocent bystanders to the slave economy, but active architects of a national system that subordinated human life to capital accumulation.
At the core of Greason’s analysis is the concept of **"property wins."** Greason deconstructs the profound philosophical contradiction embedded within the founding texts of the republic. While Thomas Jefferson’s Declaration of Independence famously asserted that all men possess "inalienable rights" to "life, liberty, and the pursuit of happiness," the American legal system engineered a radical inversion of this moral hierarchy.

In pure political philosophy, an inalienable right is a right that is completely non-transferable and intrinsic to human personhood; it cannot be sold, bartered, or stripped away by the state. Greason illustrates that the U.S. Constitution and the state courts treated the white citizen's right to *hold property* as the ultimate inalienable right, while treating the Black person's right to *life and liberty* as entirely alienable. If a master's property right in an enslaved person conflicted with that enslaved person's natural right to freedom, American jurisprudence sided with the master. The right to property was backed by the full coercive power of the state, while the right to personhood was reduced to an abstract, unenforceable rhetorical phrase.

The Statutory Subsidies of Northern Gradualism

The clearest historical manifestation of Greason's real property supremacy is found in the very laws passed to dismantle slavery in the American North: the **gradual emancipation acts**. Beginning with Pennsylvania in 1780, followed by Connecticut and Rhode Island (1784), New York (1799), and New Jersey (1804), northern states chose to phase out the institution through a system that prioritized the financial preservation of white wealth over the immediate liberty of Black human beings.

Gradual emancipation laws did not free a single living slave at the time of their passage. Instead, they functioned as a state-subsidized asset-amortization scheme designed to insulate enslavers from financial loss. The laws operated via a calculated statutory formula:

- **Permanent Bondage for the Living:** Anyone who was already enslaved prior to the enactment of the law remained an absolute slave for the rest of their natural life.
- **The Financialization of Youth:** Children born to enslaved mothers *after* the passage of the law were born technically free, but they were immediately transformed into "indentured apprentices" bound to their mother's master for decades—typically until age 21 or 25 for women, and 25 to 28 for men.

This extended period of mandatory servitude was designed to ensure that the master extracted maximum labor value from the child during their most productive youth, fully reimbursing the master for the material cost of feeding and clothing them during infancy. Gradual emancipation was not an act of humanitarian altruism; it was a cold, commercial restructuring that allowed northern enslavers to wind down their human investments without experiencing a sudden drop in their net worth.

The Clandestine Domestic Slave Trade

The fatal flaw of the gradual emancipation system—and the one that exposed its true allegiance to real property supremacy—was that it gave northern enslavers decades of advance notice that their human assets were going to be deregulated. In an uncorrected capitalist market, when an asset is placed on a statutory timeline toward zero value, the rational economic actor seeks to liquidate that asset before the clock runs out.

Following the 1793 invention of the cotton gin and the opening of the fertile lands of the Deep South, the market price for enslaved labor skyrocketed in New Orleans, Natchez, and Mobile. Northern enslavers realized they were sitting on a rapidly depreciating local asset that was simultaneously a booming commodity on the national market. A young Black child born in New Jersey or New York after the gradual emancipation acts was worth a modest amount as a temporary apprentice locally, but could be sold illegally into the Deep South for a massive cash premium as a permanent chattel field hand.

This price discrepancy triggered an extensive domestic slave trade out of the North. To prevent their wealth from evaporating, thousands of northern enslavers systematically liquidated their human assets, selling their permanent slaves and gradual "apprentices" to clandestine networks of traders who smuggled them across state lines to the cotton and sugar plantations of the South. Because northern states passed anti-exportation laws to protect their international reputation, this trade became an underground enterprise characterized by fraud, falsified documentation, and institutional corruption.

The Archival Paper Trail: The Van Wickle Ring and Forced Consent

The primary source records documenting this underground liquidation trade provide graphic evidence for Larry Alexander’s "continuing criminal enterprise" operating within the framework of “property wins.”

The most notorious example is the **Van Wickle Slave Ring** of 1818 in Middlesex County, New Jersey. The ring was masterminded by Jacob Van Wickle, a prominent county judge, along with his brother-in-law, Charles Morgan, a wealthy planter with estates in Louisiana. Because Van Wickle was a high-ranking judicial officer, he was able to utilize the court apparatus to launder human property on a massive scale. Under New Jersey law, an enslaver could only move an enslaved person out of state if the captive stated in a private interview with a judge that they were leaving voluntarily. Van Wickle used his judicial authority to sign hundreds of fraudulent "removal certificates," effectively transforming kidnapping into an officially sanctioned legal transaction.

The surviving criminal indictments held in the **New Jersey State Archives** detail how infants and children were commodified for transport on vessels like the *Sloop Thorn* and the *Mary Ann*. The dockets contain a heartbreaking list of victims who were stripped of their gradual freedom and sold into permanent Deep South bondage:

"AUGUSTUS, aged about 4 years. Indictment against Charles Morgan..."
"ROZENA, aged about six weeks... Indictment against Nicholas Van Wickle."
"JOE, aged about one year, servant for years of person unknown."

The Van Wickle ring records reveal that the state court system was actively corrupted to serve the demands of capital liquidation. The judges falsified the ages of children on ship manifests to bypass parental consent laws, treating infants as legal adults on paper so they could be legally exported as cargo.

The handwritten records of these coercive transactions survive in the **Scarlet and Black Digital Archive** at Rutgers University. Consider the cold, bureaucratic rhetoric of this April 22, 1818, certificate signed by Judge Van Wickle for his own son, Nicholas:

> Be it remembered that... Nicholas Van Wickle... brought before us Jacob Van Wickle and John Outcalt Esq. two of the Judges... his female slave named Philis aged twenty five years with her male child named Charles aged one year six months, they said Phillis being by us examined separate and apart from her Master declared that she was willing and that she freely consented to move to Louisiana.

This primary document captures the core hypocrisy of the post-Revolutionary legal system. A one-year-and-six-month-old child named Charles is officially recorded by a high court judge as "freely consenting" to be shipped to a Louisiana plantation. The law utilized the language of volition and contract to mask an act of human trafficking, subordinating the child’s natural right to liberty to the master's insatiable desire for capital accumulation.

When adult slaves or free Black Americans resisted this trafficking, the market resorted to outright violence. The archives of the **Pennsylvania Abolition Society (PAS)** are filled with frantic correspondence detailing the rise of the kidnapping trade in Philadelphia and New York. Because free Black citizens carried no physical markings to distinguish them from permanent chattel, criminal syndicates routinely snatched free people off northern streets, destroyed their "freedom papers," and shipped them south. The PAS records contain hundreds of legal petitions and letters documenting this armed assault on Black personhood, demonstrating that despite the formal abolition of slavery in Pennsylvania, the economic power of the southern market made Black liberty permanently insecure across the North.

Economic Modeling and Capital Flight: The Quantitative Impact

To understand the macro-economic impact of this northern liquidation trade, we can construct a quantitative model based on historical demographic data and the economic metrics popularized by the **MeasuringWorth** database.

If we model a scenario where approximately **25% of the North's peak 1790 documented slave population** was sold southward via these legal loopholes and underground rings during the gradual emancipation era (1790–1830), we can estimate the massive scale of capital generation and subsequent flight. This calculation uses a conservative historical average market price of **$350** per person for a mixed-demographic group (men, women, and infants) during this transition period.

Revenue Extracted via Northern Human Asset Liquidation (1790–1830)

State	1790 Enslaved Population	Estimated Number Sold (25% Model)	Estimated Historical Revenue (At ~$350/person)	Modern Asset Value Equivalent*
New York	21,193	5,298	$1,854,300	$65,000,000
New Jersey	11,423	2,856	$999,600	$35,000,000
Pennsylvania	3,707	927	$324,450	$11,300,000
Connecticut	2,648	662	$231,700	$8,100,000
Rhode Island	958	240	$84,000	$2,900,000
TOTALS	**39,929**	**9,983**	**$3,494,050**	**$122,300,000**

**Note on Modern Equivalent: As the MeasuringWorth project emphasizes, calculating the modern value of a slave asset using simple Consumer Price Index (CPI) inflation drastically undercounts their true economic power. Using their "Economic Status" or "Real Price" indicator, which measures the value of an asset relative to the total wealth and GDP of the economy, a $350 slave asset in 1810 commands an economic power equivalent to roughly $12,000 to $13,000 in modern capital.*

This economic data provides the ultimate synthesis for the Alexander-Brewer debate. Under your 25% model, nearly **10,000 human beings** were trafficked out of the North, generating approximately **$3.5 million in liquid, uncorrected nineteenth-century cash** for northern slaveholders.

This multi-million-dollar capital generation highlights the profound accuracy of the work on racial capitalism. This wealth did not disappear; it was deposited into northern commercial banks, utilized to purchase insurance policies, and invested directly into the infrastructure of early mid-Atlantic industrialization, canal building, and shipping lines. The wealth of early Wall Street and the industrial revolution in New York and New Jersey was directly subsidized by the tactical, criminal liquidation of the North's Black population into the cotton markets of the Deep South.

This reality bridges the conceptual gap between **Holly Brewer** and **Larry Alexander**: the slave trade was an imperial commercial creation that actively rewrote property law (Brewer), but because it violated the fundamental core of common law liberty, it had to operate as a slippery, clandestine criminal enterprise (Alexander), utilizing institutional corruption and legal fraud to extract the final drop of profit from human bodies.

A Theory towards Understanding American Bondage

The history of Anglo-American slave jurisprudence and its evolution into the economic system of the United States reveals that the models of Holly Brewer and Larry Kenneth Alexander are not mutually exclusive, but are two halves of a singular historical truth. Slavery within the British Empire began precisely as **Holly Brewer** describes: a top-down, state-sponsored commercial project engineered by the Crown and enforced by high-court judges who rewrote property law to serve global mercantilism. Yet, because this system violently contradicted the ancient, liberty-protecting maxims of English common law and the doctrine of birthright subjecthood, it existed in a state of permanent constitutional illegality, functioning exactly as **Larry Alexander** contends: as an extra-legal, corrupt criminal enterprise that stole the rights of "the King's native sons."

When the 1772 *Somerset* decision exposed this hypocrisy and threatened to unleash the power of common law due process against the colonies, the American Revolution was launched in the South as a defensive counter-revolution to protect this illicit wealth from imperial interference.

The resulting American constitutional settlement of 1787 resolved the tension through a masterful piece of legal engineering. Recognizing that common law naturally favored liberty, the Framers built a positive-law fortress, writing explicit compromises into the U.S. Constitution to shield human property.

This settlement established a regime of real property supremacy that corrupted the nation from coast to coast. As the history of northern gradual emancipation and the clandestine domestic slave trade demonstrates, whenever human personhood collided with the security of capital, the American legal system sided with the market. Whether through the fraudulent certificates of the Van Wickle ring or the systemic trafficking of gradual apprentices to the cotton fields of Louisiana, the law of the independent United States successfully completed the work of the old empire—ensuring that the building blocks of American capitalism remained permanently subsidized by the denial of Black due process.