

Litigating for Freedom in the British Empire, 1815-1822: The Universal and Local in Tension

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Rights Revolution and the Case of *Steytje v Anderson*

Launched by Enlightenment-influenced lawyers and notaries who sought to free a female slave, the proceedings of *Steytje v Anderson* extended from 1815 to 1822 and across two continents. This remarkable civil law case portrays key dimensions of the rights revolution and vivifies important themes in the analysis of globalization and autonomy. The rights revolutions refers to the affirmation of individual freedoms initially identified with the American and French revolutions, and later reinforced and extended by other constitutions, declarations, statutes, or judicial decisions in a number of countries and by the United Nations.

The case illustrates the rights revolution's migration far from its European home shortly after its commencement and shows how ideas of liberty travelled and challenged established local autonomy. The case also illustrates, through the actions and words of the protagonists, how capitalism and legalism confronted the rights revolution. The proceedings intimate how the rights revolution inspired men to challenge bondage, and how opponents of universal rights in turn appealed to other values: prosperity, property, and respect for the letter of the law. The case shows too how the rights revolution engendered slow and costly judicial battles. Along with demonstrating the portability and inspiration of ideas about individual rights, the proceedings also expose boundaries.

At another level, the proceedings uncover a world on the move. They transpire against the background of a mixing of people by European sea-borne empires, and note the physical rudiments of global integration in a flow of goods and documents during the age of sail.

Imperial and Revolutionary Settings

The Dutch East India Company (VOC) which governed the Cape from 1652 to 1796 was arguably the world's first transnational corporation. The VOC hired sailors and soldiers from across Europe, notably the German states, Bohemia, and Hungary. In addition to its supply port of Cape Town, the VOC in 1660 had trade enclaves around India and Ceylon, and scattered throughout the East Indies; it maintained posts in Taiwan and Japan. The VOC mixed people, and people mixed genes. The company's men took wives and slaves from many lands. Within a sprawling empire in the age of sail, communication was intermittent. Consequently, compliance with company orders was indifferent.

In early 1770, the VOC at Batavia drafted an ordinance governing manumission. Slaves, if baptized, were to be freed, unless donated or willed to the owner's relations, in which case they remained servants for life. Children born of female slaves, regardless of their mothers' religion, were never to be sold even if an estate was insolvent. This condition should have made them poor security for loans. The 1770 ordinance jeopardized slaves as transferable property and this complicated the administration of estates which, under Roman-Dutch law, often required liquidations to accomplish partitions among heirs and creditors. It also inconvenienced the mortgaging of slaves. Dreading

measures that locked capital into non-transferable servants or, worse, required manumission, slave owners ignored the law. Heirs also ignored wills in which testators freed slaves.

British administrators who took control of the Cape colony in 1806 did not pay attention to Dutch slave laws until Governor John Cradock asked a Dutch official for a report on slave laws in late 1812 or early 1813. Cradock learned that Cape slaves included people who should not have been slaves and that the colony's Court of Justice, a remnant of the Dutch era, sustained evasion of the law. Cradock distrusted the Court of Justice which met in camera and ordered public proceedings. English common law upheld the idea of open trials; continental justice did not. British supervision of slavery intensified with the arrival of Cradock's successor, General Lord Charles Somerset, a Tory autocrat. Somerset's mother, the Duchess of Beaufort, was a champion of anti-slavery and a friend of the leading British emancipationist William Wilberforce.

The Litigation

A small group of Cape Town lawyers and notaries, several educated in French-controlled Europe and imbued with the ideals of the Enlightenment and the French Revolution, formed a cabal to free slaves. One slave they helped was Steyntje. During early 1815, they took their first steps to free her. Her owner's attorney derided the cabal as "false advocates of humanity, who, either through affection, or too much sensibility, launch out onto high sounding phrases, and who continually call favor to be shewn to the cause of liberty, contrary to the most approved principles of law and justice." The age of revolutions — most notably the French and American revolutions — thrust ideas of liberty into public fora where slavery's defenders posed as champions of law against liberty.

The conspirators searched for episodes in Steyntje's life that supported technical reasons for freeing her. The Court of Justice, however, concluded that Steyntje was born a slave, and nothing had changed that. The colony's Court of Appeals agreed to hear the case. The court's one judge, none other than the colony's governor, overturned the Court of Justice's ruling. His 1819 decision outraged the city's slaveholders who condemned his lack of respect for local autonomy. Slave owner George Anderson petitioned for the right to appeal to "the Lords Commissioners appointed for hearing and determining Appeals from the Colonies and Plantations." What was a local dispute migrated to London where the Tory government defended its governor. Anderson secured the kingdom's foremost civil law authority, Stephen Lushington who brought Henry Peter Brougham into the case. Lushington and Brougham, parliamentary opponents of slavery, would argue, paradoxically, against Steyntje's freedom before the Privy Council. As prominent Whigs, they seized this opportunity to censure the one-man colonial government of Somerset.

When appearing for Anderson before a committee of the Privy Council in May 1822, Lushington and Brougham insisted on emancipation credentials. They intimated that Steyntje's case, exploiting sly tactics, did not squarely address slavery throughout the empire. Compensation figured centrally in discussions of emancipation; at the same time, in the ideologically charged era of the Napoleonic wars, freedom was both admired and feared. In *Steyntje v Anderson*, all men claimed to be lovers of freedom. Anderson's Cape Town advocate alleged sympathy for emancipation accomplished gradually. Anderson claimed to love freedom, but insisted that "the first and surest step toward a rational freedom, in every country, is a strict maintenance of the existing laws until it is found expedient to alter or abolish them." After the age of revolutions, a discourse on freedom and its consequences suffused the slave-holding regions of the English-speaking world. Lushington and Brougham faced Attorney General James Scarlett. The empire's leading jurists argued the fate of Steyntje at Whitehall. The Privy Council ruled that Roman law gave slaves the benefit of doubt when

freedom was at stake and that several events in Steyntje's life gave her claims to freedom. "Libertas omnibus rebus favorabilior est." Freedom at Cape Town, however, came with restrictions. Deemed a prostitute and unfit mother, Steyntje lost her children who became indentured servants. The governor's instructions on the disposition of Steyntje and her family foreshadowed slavery's replacement by social control measures — policing, master and servant contracts, and segregation — to exploit and control subject peoples.

Antecedents of Globalization

Slavery's forced intercontinental movements of people and the emancipation debates depict an integrating world. Global issues — for example today's environmental concerns, human rights, weapons control, peacekeeping, and the gap between rich and poor — had a precursor. The long nineteenth-century debate over slavery was a global issue of immense significance. The American and French Revolutions with their Enlightenment-based assertions of individual freedom were preconditions for emancipation, and the laissez-faire disarray in post-emancipation societies. There was another intimation of global integration. The case reached the Privy Council — a judicial body that had jurisdiction in many places in the world. The British government was no world government; the Privy Council was no world court. Yet, the case depicts a step toward global jurisprudence.