

Black Litigants in the Antebellum American South

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Review

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Welch, Kimberly M. *Black Litigants in the Antebellum American South*.
University of North Carolina Press, \$39.95 ISBN 9781469636436

Kimberly Welch has written a superb book. *In Black Litigants in the Antebellum American South*, Welch invites her reader into the local courtrooms in the Natchez district of Mississippi and Louisiana to witness a version of the slave South that, until recently, few historians had bothered to tell, or perhaps had even imagined. It is a version that shows persons of color—free and enslaved—as litigators, as people using the law to actively protect their interests and shape their own destinies.

Welch's book is based on over a thousand cases that must have taken countless hours to uncover, let alone read and categorize. Anyone who has done archival work in county courthouses can surely attest to the challenges that come with the experience. Long forgotten, trial records—assuming they still exist and have not been destroyed by fire or flood or general neglect—are often randomly filed, mislabeled, damaged, or incomplete. Without an index, or some way to know what the cases are about, often the only option is to carefully unwrap the tri-folded legal papers, push aside the bugs, and dive into the record. But Welch has made the journey well worth the effort. By focusing on an array of cases brought by people of color, Welch has opened up a window into the daily life of the antebellum South that challenges our traditional understanding of the role of the law as simply a method to reinforce and support slaveholding interests and white racial attitudes.

The usual story goes something like this: black persons were acted upon, with the law being akin to the whip. It was used as a tool of oppression, drafted by powerful politicians, enforced by unscrupulous owners and overseers, and legitimized by ideological judges. Welch's version, however, stakes out a far more nuanced position. She says at the outset that her book is not a story of "fairness" or "of black people's access to justice," nor is it a story of "white honor, paternalism, or hegemony." "It is, rather, a study of claims-making and the language used to that

end” (p.13). To the extent persons of color found success in the courts—and they did, far more often than we might think—Welch argues it was because they (and their lawyers) knew how to speak the language that mattered in the courtroom: what Welch styles “the language of property.” People of color framed their arguments about wrongs done to them, she says, in much the same way that whites constructed their arguments, utilizing concepts of property ownership—over land, labor, and even themselves—that were familiar to nineteenth-century litigants. In doing so, people of color forced judges and juries to decide whether their commitments to white supremacy outweighed their commitments to property. It just so happens, Welch finds, that the protection of property regularly won out.

Welch constructs her book in two parts. In her first three chapters, Welch focuses on the tactics black litigants used to succeed in court. In her first chapter, for example, Welch draws on the familiar concept of trials as narratives, as opportunities for lawyers to tell a story that humanizes their clients and creates sympathy for their cause. In the context of black litigants in the antebellum courtroom, the use of stories had great significance, given that many whites viewed persons of color as less than human. By constructing narratives that were both familiar and relatable, Welch suggests that black litigants were able to challenge white assumptions about race and status. Through their lawsuits, people of color forced white judges and juries to reimagine how African Americans fit into the social and legal order, using the rule of law to their advantage.

Pierre Salvador’s land dispute with John Turner provides an illustration. Salvador, a free black man, settled on a piece of land in Louisiana in 1841 and began to improve it, clearing the land and building a home. Before he could register his land patent, however, Turner showed up, made a claim to it, and paid the purchase price. Turner, being a white man, thought his race should trump clearly established law, which held that the right to claim the land belonged to the person who made the first settlement. When Salvador filed suit and told his version of the events, however, the local judge came to a different conclusion. In his petition, Salvador brushed aside Turner’s arguments that he was not a “citizen” and therefore could not own property, and instead cast himself as a settler with the same rights and responsibilities as anyone else. The judge agreed, finding that the laws supported Salvador as the rightful owner and declared Turner a trespasser. To the extent the result seems surprising—especially given Chief Justice Roger Taney’s infamous declaration a few years later in *Dred Scott*, that black persons

were not citizens and “had no rights which the white man was bound to respect”—it serves to illustrate Welch’s argument that the framing of the argument mattered. Cloaked in the language of property, Salvador’s lawsuit was an easy case.

The second part of Welch’s book focuses on the types of claims black litigants brought and the scope and significance of their litigiousness. Over the course of several chapters, Welch brings us into the courtroom and lets us hear the stories of black advocacy in a variety of contexts. Many of the cases were run-of-the-mill and hardly the stuff that traditionally sparked the interest of legal historians seeking insight into the antebellum South. They involved disputes over a few hundred dollars of unpaid debt, disagreements over land ownership, dust-ups over broken promises, and of course a multitude of conflicts over personal property. But that seems to be Welch’s point. By tapping into a broad array of everyday litigation, we have an opportunity to better understand everyday life. Suddenly, those bright line assumptions about subordination and domination are a lot less clear. No one doubts the brutalities of slavery. But Welch’s analysis gets us thinking: alongside the horrors of slavery, how was it that black people were also winning cases and holding white people to account? Life on the ground, it seems, was far messier and much more complex than previous accounts have allowed.

Notice, too, that in focusing on the language of the claims, Welch also opens the door to larger discussions about the *meaning* of black advocacy. As she puts it, by drawing on the language of property, and invoking the rights that come with it, black litigants were making claims to civic inclusion. In the nineteenth century, property consisted of more than simply tangible items; it also included relational aspects, linking owners and non-owners. It also included rights closely associated with certain freedoms, such as the right to own someone and the right to own one’s self. By laying claim to those rights, Welch argues, black litigants demanded that they be allowed to participate in community life under similar terms as whites. By no means did their lawsuits undermine the institution of slavery. But they did allow persons of color to shape, in small ways, the material condition of their lives. As Welch argues, through their lawsuits and the exercise of their legal rights, persons of color created a space for themselves—“a space to tell their stories; a space to raise their voices; a space to make their claims; a space to have those claims recognized; and a space where their claims counted” (p.19). Their claims, in other words, made for a more tolerable world.

Welch's book fits nicely within the recent work of scholars like Annette Gordon-Reed, Ariela Gross, Martha Jones, and Lea VanderVelde. Like the others, Welch makes a strong case for concluding that people of color—both free and enslaved—had more rights than traditionally assumed, and that they knew how to use these rights to carve out a life for themselves. *Black Litigants in the Antebellum American South* is a worthy contribution and belongs on the bookshelf of anyone trying to understand how race and slavery was experienced on a daily basis.

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