

Appealing For Liberty: Freedom Suits in the South

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Review

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Schwenger, Loren. *Appealing For Liberty: Freedom Suits in the South.* Oxford University Press, 2018 \$39.95 ISBN 978019664282

As director of the Race and Slavery Petitions Project at the University of North Carolina-Greensboro, historian Loren Schwenger has for years mined legal records in exploring American slavery. His *Appealing for Liberty* is a successful effort to fill in gaps in that history and the African-American experience in the southern judicial system by examining over 2000 freedom suits filed by slaves in the southern courts from the colonial through the antebellum periods. The suits reveal both the tenacity of enslaved people using the courts to escaping bondage notwithstanding expected bias, lop-sided laws favoring masters, as well as the ever-present sense of the unquestioned sanctity and necessity of slavery hovering in the background. It also is a fascinating window into the values and beliefs of a number of white, and commonly slaveholding, southern lawyers, judges, and supporting witnesses who valued the rule of law and fairness above the interest of other slaveholders in supporting and favorably ruling on freedom petitions against the property interests of defendant slaveholders even in light of southern society's increasingly adamant defense of the "peculiar institution."

In short, as well as further illuminating the nature of slavery and of the enslaved person's struggle for freedom, the cases reveal that a number of judges, and many of the lawyers representing slave petitioners, followed legal principles and notions of fairness to their logical conclusion in granting freedom to a number of enslaved petitioners. They more often than not ignored the abstract moral arguments, and downplayed sentiment, but looked to contractual principle and the rules of equity in reaching their decisions. Schwenger aptly describes this process as "a stirring human drama of principle and perseverance." (p. 4)

Although a number of southern states enacted slave codes that provided for trials with some limited measure of due process, Schwenger's study demonstrates that plaintiffs were with some regularity afforded the opportunity by the courts for discovery of supporting evidence

and legal protections that went beyond what would have been allowed under many slave codes. Accordingly, petitioners could participate in depositions, obtain court orders barring defendant owners from selling the petitioners before judgment was rendered, as well as benefiting from the services of attorneys who took their obligations to the enslaved client in constructing a viable case seriously, often working for considerable periods before the case was resolved. Not surprisingly, discovery could be exceedingly difficult for lawyers and their enslaved clients. The passage of time dimmed memories, written records were few, and many defendant slave-traders, owners, and heirs of deceased masters were uncooperative at best, if not perjurers. On the other hand, many petitions were supported by white witnesses whose testimony often challenged or contradicted a defendant's position, and hearsay evidence was not automatically excluded by the courts.

Because of its regional scope, a secondary benefit of this work is the appreciation of how local culture, customs, and practices in the different southern states impacted a freedom suits progress through the courts and the application of the rule of law. Clearly, differences existed because of past legal and cultural influences, economic activity, and even geographic proximity to free states. While the rule of law and the fair application of the laws resulting in freedom did occur not infrequently, Schweningen clearly reminds the reader that judges and juries could still interpret the law to protect the institution, that court decisions were not consistent, that witnesses and parties lied, and that equality was never a consideration. What seems to be clear, however, is that enslaved peoples were not hesitant to make use of the judicial system to seek their liberty and that, on occasion, they were aided by judges and lawyers who believed in the rule of law or were motivated by a sense of fairness and professional duty toward a client or litigant. And yet, sadly, in many cases the reverse was more often the case.

Schweningen organizes his narrative around the different categories of freedom suit plaintiffs. This scheme permits the reader to understand that the difference in status and the basis for the claim of freedom could implicate distinct groups of litigants and witnesses as well as the difficulty of proving a case. For example, Chapter 6 examines plaintiffs claiming their liberty based on their descent from a free female ancestor. Because that ancestor was usually deceased, plaintiffs struggled to find the necessary evidence to support their claim and often had to rely on the memories of aged witnesses who knew the ancestor and who could testify both to the status of the ancestor but as importantly the familial connection between that ancestor and the plaintiff.

Thus, such cases illustrate not only the discretion of the courts in permitting such evidence, but further the obstacles a claimant had to overcome a lack of documentary evidence to support that claim of descent. Moreover, these cases reveal the significant role of African-American women in maintaining oral family genealogies during a period in which an enslaved person's existence may have been recognized by a simple notation in a ledger or will. Additionally, among others, he explores suits founded on testamentary manumission or promises of future freedom, as well as residency in free states and territories. These examinations are aided by helpful statistics on the outcomes of the various suits found in the appendix and by extensive footnotes providing the reader with useful information and commentary.

To aid the non-lawyer reader, Schwenger does provide some basic context and history of the different court systems and the evolution of state laws, processes, and precedents pertinent to the understanding the progression of a freedom suit. Indeed, this is critical to appreciate to understand what litigants faced and the principles at work in each case. Examining the evolution of the laws reveal the hardening response of slaveholding states to the growth of sectionalism and anti-slavery movements in the United States that often made it more difficult for plaintiffs to meet their legal burdens, but also underscores both the tenacity of those plaintiffs and the attorneys who represented them in seeking justice.

Professor Schwenger examination of the intersection of the court system and slavery *vis-à-vis* freedom suits is a valuable contribution to the legal history of the South in general and the history of slavery and slave life. This study brings to greater attention the complex intersection of slavery and the law especially regarding the power slaves could occasionally wield against their masters through the courts. He has provided legal, social, and cultural historians with a rich source and interpretation of evidence with which one can explore both the slave experience in the legal system and that of the white legal class who dealt with the freedom suits in a society that, on the surface, expected no challenge to slavery.

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(Dr. Connolly recently retired from the University of North Georgia-Dahlonega where he taught southern and legal history. Prior to succumbing to Clio's embrace, he was a trial lawyer in Savannah, Georgia)