



Social Activism through Court Action: Black Litigation in the Nineteenth Century

*Ativismo social através da Justiça:
litígios judiciais de pessoas negras no século XIX*

*Activismo social a través de la Justicia:
litigios judiciales de personas negras en el siglo XIX*

*João Gabriel Rabello Sodré**

WELCH, Kimberly M. *Black Litigants in the Antebellum American South*. Chapel Hill: University of North Carolina Press, 2018. 328p.

This book review examines the book *Black Litigants in the Antebellum American South*, by Kimberly M. Welch (2018), which discusses Black litigation in nineteenth-century US. This piece will attempt to draw potential comparative approaches to Brazil, namely regarding social activism under slavery. Given the rich literature on Brazilian slavery, especially on the myriad of social roles performed by Black Brazilians despite the oppressive constraints of slavery, this review will first discuss a book set in the United States before contextualizing it within a broader scholarly milieu, bringing

elements of Brazilian academic work which relate to the discussions provided by the Welch's book.

Kimberly M. Welch is an associate professor at Vanderbilt University's History Department. Her work focuses on the intersections of the law, slavery, Black social activism, among other issues. The structure of this piece includes a discussion on sources and their limitations, an overview of selected chapters, and a discussion on relevant literature. By discussing creative ways through which Black people were able to use the Judiciary in a Southern town, Welch contributes to a broader literature on Black legal action. It is also a relevant comparative case for Brazilian academic analysis, given that Brazil's scholarship has long discussed the various roles freed people of color and

DOI: <http://dx.doi.org/10.1590/2237-101X02405415>

Review received on March 16, 2022 and accepted for publication on March 2, 2023.

* Researcher at Georgetown University, Washington, DC – United States of America. E-mail: jr1834@georgetown.edu. ORCID: <https://orcid.org/0000-0003-3821-1404>.

enslaved persons performed, especially in major cities such as Rio de Janeiro.

In *Black Litigants in the Antebellum American South*, Welch (2018) examines court documents that reveal how Black plaintiffs were in some cases able to use a biased justice in their favor. A common tactic in the various cases examined by the scholar is the use of a property language before judges and clerks, which would convince them that rights had been violated. The book, thus, seeks to “reevaluate our understandings of the relationship between black people, claims-making, racial exclusion, and the legal system in the antebellum South” (WELCH, 2018, p. 5). Whereas courts in that context have been traditionally understood as reflective of white ideologies of the planter elite, primary sources examined by Welch in the Natchez district of Mississippi and Louisiana between 1800 and 1860 indicate that free and enslaved Black people used courts in their favor (p. 5-6).

The scholar acknowledges the challenges of interpreting sources, not only due to their poor state of conservation but also due to a characteristic of legal documents. In such court documents, voices were mediated by officials, witnesses, clerks, with petitions often simplistic, containing hints such as names, dates, and perfunctory information (p. 8). Moreover, sampling is complex, as many of the cases were never concluded, whereas parts of dockets went missing, and others, not recorded, were summarily rejected. Still, the existing documents provide a rich understanding of daily life

in the South, especially in civil situations, as often references to African Americans focus on their position as defendants in criminal cases. Subverting this tradition, Welch seeks to place Black Southerners at the center stage, and in civil actions, indicating how they also sued other people, and in property-related matters. Instead of arguing in favor of human dignity, those plaintiffs alluded to property-based criteria that were favored by the legal system. In Welch’s terms, “while southerners wanted to uphold white supremacy...on the other, they also valued private property” (p. 13). While not receiving special treatment before the bar, they were not impeded to initiate lawsuits in their own interests, protecting, enhancing, recovering their property, as well as safeguarding their families, ensuring their futures, making equal bargains, and claiming freedom and rights for free people (p. 217). All this, as the scholar highlights, before formal emancipation.

The first part of the book, comprising Chapters One, Two, and Three, is largely dedicated to matters of language and representation, as well as strategies of social contestation involving both. Chapter One, for instance, discusses storytelling practices. Chapter Two, Welch examines how a language of reputation assisted Black litigants in court, given the relevance of status and prestige in Natchez, Mississippi. Reputation was crucial especially due to the personalistic tone of relationships, which literally involved face-to-face interactions (p. 64). Many in the city perceived indebtedness as shameful. Indebted whites saw it as a

form of enslavement. This can be inferred from newspaper articles, sermons, as well as other written sources (p. 164). Therefore, Black people able to lend had a powerful way of demanding payment, and they did allude to that language of respect. With this first section discussing more general aspects attained to the law, language, representation, local customs, among other issues, Welch moves on to a second part, in which kinds of legal practice are discussed.

Chapter Four is a particularly valuable section, which brings several examples on the subversion of power relations that litigation represented, which is a central part of Welch's argument. The chapter discusses various cases concerning loans and debt. Southern legislation had been designed to disenfranchise and marginalize Black Americans. But the vast array of cases found by Welch in the circuit court of Natchez, Mississippi, suggest that at times freed Blacks and, to a lesser extent, enslaved people at times were able to provide personal loans to whites. While the practice was common in the location, being indebted to a Black person seemed to be a problem for white residents. Primary sources examined by Welch indicate that often white lenders disguised loans as "gifts." The scholar did not identify this language of friendship, however, in Black-to-white credit relations (p. 116). Besides cash, loans also occurred through the issuance of promissory notes, which circulated in the location. These, in their turn, proved to be important pieces not only for court litigation, but also for historical analysis. Therefore, Welch's work

also considers other documents besides court dockets, including, for instance, newspaper ads, and titles that circulated in the city. Between 1800 and 1860, out of ninety cases, Black litigants lost only two, and two thirds of those cases had white defendants (p. 121). What stands out in Welch's work is the fact that Black people went to court, just as white creditors did. The cases of Natchez reveal how, despite the white supremacist ideology that dominated the Southern United States prior to the emergence of the US Civil War, in some instances Black people found ways to navigate the system, attempting to assert their rights. Historical evidence becomes even more revealing when documents indicate that whites used slaves as collateral, i.e. property to be executed in case of default (p. 126). Nonetheless, Welch is clear about the incomplete nature of the sources, as previously discussed, being also aware of the impossibility of generalizing certain situations.

While focusing on civil cases, Welch does not limit the discussion to merely transactional issues. Reputation, status, and challenges to social hierarchy are key issues in the book. The piece also discusses how the legal system shaped family structures. Chapter Seven exemplifies this. The section discusses how family bonds mattered in court documents. In cases of manumission, plaintiffs alluded to family bonds to free their relatives (p. 200). At times friends also acted in court (p. 200). Other family law cases included attempts to formalize relationships when marriage was not an option. Welch examines, for

instance, a couple's affirmation of their longstanding relationship, made through the incorporation of a shared surname into documents (p. 201). Black litigants also went to court to prove paternity links (p. 202). The vast number of cases discussed by Welch reveal how litigation among Black persons in parts of Southern US was more prevalent than one may think. By reaching courts, Black people were not only seeking a resolution to their cases, but also contesting a racist society. Throughout the book, Welch indicates to the audience how, despite the oppression of a white supremacist ideology that structured the legal system, non-whites were, at times, able to circumvent limitations and obtain favorable court rulings. Legal participation occurred not only in criminal venues, but also in civil cases. The book, thus, contributes to a broader understanding of Black participation in courts, and how non-whites did manage to occupy relevant spaces despite the legality of slavery in pre-Civil War times.

In doing such an extensive research, Welch's work may allow us to establish a bridge between Brazil and the United States. Scholarship in the former has long stressed the different roles Black Brazilians performed prior to abolition (1888). For instance, in *A Black Jurist in a Slave Society: Antonio Pereira Rebouças and the Trials of Brazilian Citizenship*, Keila Grinberg (2019) examines the trajectory of Antonio Pereira Rebouças, a renowned Black intellectual and lawyer who supported liberalism and Brazil's independence from Portugal as early as the 1820s. Grinberg's

book seeks to address the interwovenness of law, notions of citizenship, and liberalism in post-independence Brazil, centering on the figure of a Black social actor, whose actions influenced legal discussions in nineteenth-century Brazil, despite the existence of a slavery system. Whereas a different perspective on the role of law, rather linked to notions of inclusivity and citizenship, Grinberg's piece dialogues with Welch's book, by also providing evidence of how an important Black historical figure managed to navigate an oppressive system. Brazilian academic works also include the late João José Reis' extensive and pivotal work on social resistance to oppression, which has given a bottom-up perspective on the lives of enslaved persons. The main character in Reis' book *Domingos Sodré, um sacerdote africano: escravidão, liberdade e candomblé na Bahia do século XIX* (2008), resists a racist social order with particular skills and specific performances. This historical analysis, as in the case of Welch's book, does not imply an attenuation of a slave society's violence, rather showing the audience how social contestation occurred, and how a Black person could be an agent despite many constraints.

It is true that comparisons between the United States and Brazil are inevitable, yet subject to caution. Eminent professor Ronaldo Vainfas has long cautioned the audience on the potential problems of loose comparisons between both, which may be in fact fomented by other reasons, namely American expansionism, contrasting with an alleged underperformance of post-

independence Brazil (VAINFAS, 1999, p. 10). Nevertheless, Welch's focus on nineteenth-century Southern US, a region that shared traits with Brazil, including the influence of European continental law (in the case of Louisiana), provides an interesting case for comparison. While nineteenth-century US and Brazil were quite distant geographically, and subject to particular influences, oppressed groups in both societies, in certain contexts, managed to navigate a racist system, attempting to claim their rights. Welch's book reveals the intricate relations established by freed people as well as enslaved persons, who performed different roles in their societies, beyond the classical vision of a "cotton South".

References

- GRINBERG, Keila. *A Black Jurist in a Slave Society: Antonio Pereira Rebouças and the Trials of Brazilian Citizenship*. Translation: Kristin McGuire. Chapel Hill: University of North Carolina Press, 2019.
- REIS, João José. *Domingos Sodré, um sacerdote africano: escravidão, liberdade e candomblé na Bahia do século XIX*. São Paulo: Companhia das Letras, 2008.
- VAINFAS, Ronaldo. Colonização, miscigenação e questão racial: notas sobre equívocos e tabus da historiografia brasileira. *Revista Tempo*, Rio de Janeiro, v. 8, p. 3-12, 1999.
- WELCH, Kimberly M. *Black Litigants in the Antebellum American South*. Chapel Hill: University of North Carolina Press, 2018.