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# From the "Legal Culture of Slavery" to Black Legal Culture: Reimagining the Implications and Meanings of Black Litigiousness in Slavery and Freedom

**Myisha S. Eatmon**

DE LA FUENTE, ALEJANDRO, and ARIELA J. GROSS. *Becoming Free, Becoming Black: Race, Freedom, and Law in Cuba, Virginia, and Louisiana*. New York: Cambridge University Press, 2020. Pp. xiv + 282.

EDWARDS, LAURA F. *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South*. Chapel Hill: University of North Carolina Press, 2009. Pp. xvi + 430.

GROSS, ARIELA J. *Double Character: Slavery and Mastery in the Antebellum Southern Courtroom*. Princeton, NJ: Princeton University Press, 2000; reprinted Athens: University of Georgia Press, 2006. Pp. xi +263. $110.00.

JONES, MARTHA S. *Birthright Citizens: A History of Race and Rights in Antebellum America*. New York: Cambridge University Press, 2018. Pp. xix + 248.

KENNINGTON, KELLY M. *In the Shadow of Dred Scott: St. Louis Freedom Suits and the Legal Culture of Slavery in Antebellum America*. Athens: University of Georgia Press, 2017. Pp. xviii + 288.

WELCH, KIMBERLY M. *Black Litigants in the Antebellum American South*. Chapel Hill: University of North Carolina Press, 2018. Pp. xiv + 306.

*This review essay considers Alejandro de la Fuente and Ariela J. Gross's* Becoming Free, Becoming Black *(2020); Laura F. Edwards's* The People and Their Peace *(2009); Ariela J. Gross's* Double Character *([2000] 2006); Martha S. Jones's* Birthright Citizens *(2018); Kelly M. Kennington's* In the Shadow of Dred Scott *(2017); and Kimberly M. Welch's* Black Litigants in the Antebellum South *(2018), arguing that one important implication of these works is that the roots of post-Reconstruction Black legal culture can be found during the antebellum period. The essay synthesizes the insights of these works regarding legal culture, legal consciousness, vernacular legal education, and legal networking. It concludes that, for students of Black legal culture and litigation for and by Black people beyond Reconstruction (that is, Jim Crow), examining the historiography of antebellum litigation for and by Black people is an important starting point in advanced discussions about Black legal culture.*

Myisha S. Eatmon is an Assistant Professor of African and African American Studies and History, Harvard University, Cambridge, MA, United States. Email: myishaeatmon@fas.harvard.edu

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## INTRODUCTION

It was likely hot and muggy on June 24, 1890, when Wesley Crayton and his wife Henrietta attempted to board a Louisville, New Orleans, and Texas Railway Company train to head home to Vicksburg, Mississippi. The two had spent their day on a picnic excursion near Haplin Station, Mississippi, along with other community members. The event was so heavily attended that the railroad company arranged to have two trains transport Black passengers from Vicksburg to Haplin Station that morning. Still, the company only arranged for one train to carry Black passengers back to Vicksburg that evening.[1] One train would not suffice to transport all of the picnic's Black attendees, so Crayton, his wife, and their party waited to take a later train. The excursion manager and the tickets they had purchased for the trip authorized them to ride the regularly scheduled train instead of the packed excursion train.[2] Crayton testified that he helped the others in his party, "most of whom were ladies," board once the regular train arrived.[3] When Crayton and his wife prepared to board, a white conductor named Hughes tried to prevent them from boarding the train. Hughes was "evidently under the impression that the plaintiff and his wife were trying to get into the white coach." However, they were "intending to go across from that platform into the colored car adjoining."[4] Crayton testified that he and his wife were met with "insulting language and personal violence,"[5] alleging that Hughes told them "you God damn n****rs get off of here or words to that effect" and that Hughes "shoved [his] wife back and knocked [Crayton's] hat off."[6] The Craytons were put off of the train and had to wait until nearly midnight for the next train, almost seven hours after their initial train had departed.[7]

Although it is hard to know what happened that day and testimony from the trial is conflicting, one thing is for sure: Wesley Crayton sued the railroad company for what happened that day and won. According to *The Gazette* and other Black newspapers, Crayton was wealthy, a successful proprietor of whiskey, served as an alderman, lived in a seven-thousand dollar home that he owned outright, and held thirty thousand dollars worth of real estate in 1889.[8] Crayton could read and write and was a successful businessman and local politician.[9] The news of Crayton's trial court victory was picked up by Black newspapers in other parts of the country, with the *Cleveland Gazette* reporting: "At Vicksburg, Miss., recently a jury of twelve white men gave Wesley Crayton, an Afro-American, who was ejected from a railroad train, a verdict of $2,000 damages."[10] On appeal, the Mississippi State Supreme Court affirmed that decision.

1. *Louisville, New Orleans, and Texas Railway v. Wesley Crayton*, 69 Miss. 152 (1891), Case Record, 1, Abstract and Brief for the Appellee.
2. *Louisville, New Orleans, and Texas Railway*, Abstract and Brief for the Appellee, 1.
3. *Louisville, New Orleans, and Texas Railway*, Testimony of Wesley Crayton, 9–10.
4. *Louisville, New Orleans, and Texas Railway*, Abstract and Brief for the Appellee, 2.
5. *Louisville, New Orleans, and Texas Railway*, Abstract and Brief for the Appellee, 2.
6. *Louisville, New Orleans, and Texas Railway*, Testimony of Wesley Crayton, 10.
7. *Louisville, New Orleans, and Texas Railway*.
8. "South [Illegible]," *Huntsville Gazette*, March 27, 1886, 1; "Personal Mention," *Weekly Pelican* (New Orleans, LA), February 19, 1887, 2; "Doings of the Race: Falls Heir to $75,000—Received $175,000 for His Property. Secured Good," *Cleveland Gazette*, May 30, 1891, 1; "Race Echos," *American* (Coffeyville, KS), August 6, 1898, 1; "Topeka; Suprise; Visit," *Wichita Searchlight*, March 15, 1902, 4; 1890 United States Federal Census.
9. 1900 United States Federal Census.
10. "Doings of the Race."

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As Crayton laid out what an all-white jury would deem a compelling case, he testified that he "kn[e]w the rules of the road." During the altercation, Crayton allegedly threatened the conductor, exclaiming: "I will get even with you," which he argued meant that he "was [going] to enter a suit against the railroad company."[11] But how did he know that he could sue the railroad company for this incident without first consulting an attorney? Without formal legal education, Crayton could draw on his interpersonal connections and understanding of local rules and regulations to determine when legal action was possible. This informal, or vernacular, legal education was derived from Crayton's knowledge of his community and a long history of Black vernacular legal education.

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The incident involving the Craytons and the conductor serves as a window through which scholars can examine Black Americans' litigation and legal savvy after the Civil War and Reconstruction. The case begs the question: how did African Americans know that they could sue for white violence under Jim Crow, especially those without Wesley Crayton's wealth, education, and local connections (Alexander 2012; Eatmon 2020, 211)?[12] How did they know whom to trust to help them navigate the legal system, as many were not attorneys themselves, and how did they learn which strategies would stick in civil courts? The answers to some of these questions lie in antebellum America.

Tort law crystallized during the post-emancipation period, creating space for Black Americans to develop specific legal strategies to combat the burgeoning racial caste system that began in the late nineteenth century. Still, Black litigiousness, vernacular legal education, and legal networking developed during the antebellum period. To better understand Black legal maneuvering after the Civil War, scholars must return to the history and historiography of litigation for and by Black people before emancipation, when these strategies were developed despite the control that enslavers and white citizens held over enslaved people and free people of color pursuing legal claims.

Both historians and lay people generally use the Civil War as a bookend for the first half of US history and Reconstruction as the beginning of the second half. Often, historians who study the late nineteenth and early-to-mid-twentieth centuries begin their inquiry after 1865, the year General Robert E. Lee surrendered at Appomattox Court House and the day that the last bondmen of chattel slavery were liberated in Galveston, Texas. There are, of course, exceptions to this generalization, including Martha S. Jones's (2018) *Birthright Citizens*, considered in this review essay; Tera Hunter's (2017) *Bound in Wedlock*; Stephen Kantrowitz's (2012) *More Than Freedom*; and Dylan C. Penningroth's (2003) *Claims of Kinfolk*. Other works, like Melissa Milewski's (2017) *Litigating across the Color Line*, Brandi Clay Brimmer's (2020) *Claiming Union Widowhood*, and Penningroth's book (2023) *Before the Movement* span the bookend, either by incorporating the Civil War into their analysis or by dedicating an opening chapter to Black legal activity before the Civil War. Examining the

11. *Louisville, New Orleans, and Texas Railway*, Testimony of Wesley Crayton, 10.

12. I define Jim Crow as lasting from the 1880s until the 1960s, after which I argue it morphs into the "New Jim Crow," a term coined by Michelle Alexander (2012).

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historiography of the antebellum period makes clear that historians lose nuance by remaining loyal to the traditional historical break and periodization.

The Civil War and Reconstruction bookends are not the only bookends that limit our understanding of a longer Black legal tradition; there is also a false break between the Colonial and Revolutionary periods and the antebellum period. From Kathleen Brown's (1996) *Good Wives, Nasty Wenches, and Anxious Patriarchs*, to Ira Berlin's (1998) *Many Thousands Gone*, to Jonathan Bryant's (2015) *Dark Places of the Earth* and many others, scholars of the Colonial and Revolutionary periods have examined legal activity for and by Black people before the antebellum period, demonstrating that early Black arrivals had a legal consciousness that was informed by their transatlantic context and creolization. This legal consciousness and the litigation borne from it laid the groundwork for the Black legal culture that I describe in this review essay. Though the false break between the Colonial period and the antebellum period is not the subject of this essay, it is important to note that a Black legal tradition, or what I call Black legal culture, was built over two centuries in a transatlantic and transnational context well before the antebellum period.[13]

In this review essay, I invite historians of Jim Crow and those who study what I call "Black legal culture"[14] to join me in looking back at Black people's litigation and legal culture during the antebellum period to better understand that culture during Reconstruction, Jim Crow, and even the twenty-first century. When historians use the Civil War as a bookend to modern African American history, they sometimes miss the opportunity to trace cultural and legal continuities between the antebellum and postbellum periods. The work that has gone into synthesizing antebellum legal culture—Kelly Kennington's (2017) "legal culture of slavery" or Jones's (2018) "vernacular legal culture"—sets up the work that scholars of Jim Crow, policing, and "the New Jim Crow" can do moving forward.

There are far more continuities between the antebellum and postbellum periods than one might think. Looking at the historiography of antebellum litigation for and by Black people,[15] we might even be able to trace continuous—and continuously morphing—Black legal culture(s) from slavery, to freedom, to Jim Crow and twenty-first-century Jim Crow 2.0. When, instead, we begin our study with emancipation and Reconstruction, we lose the rich history of Black litigation strategies, legal networks, and informal legal education that began during slavery. People without legal personhood in the case of enslaved people, and without citizenship, in the case of free people of color, laid the groundwork for the Black legal culture(s) possible from Jim Crow to the 2020 uprising and beyond.

In this review essay, I consider a selection of illustrative works on antebellum Black legal culture by Alejandro de la Fuente, Laura F. Edwards, Ariela J. Gross, Martha S. Jones, Kelly M. Kennington, Kimberly M. Welch, and others. Taken together, these

13. Thanks to Kim Welch for flagging this point.

14. I will provide a more robust definition and examination of Black legal culture below, but, for now, Black legal culture is how Black people collectively learned, understood, reimagined, mobilized, interacted with, and shaped the law.

15. Throughout this review essay, I will use "litigation for and by Black people" and "Black litigation" interchangeably. I use these phrases to describe litigation initiated by Black people as parties in the litigation, not subjects of litigation. Black litigation is the litigation brought for and by Black people.

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works argue that Black people—free and enslaved—were very active litigants during the antebellum period; they were legally savvy and brought their knowledge of the law and thirst for legal information with them into the post-emancipation period. Michelle Alexander's (2012) historical argument that we live in the new Jim Crow undergirds this essay.[16] But we can raise very important questions: how does one get from slavery to Jim Crow, and how does one transition from Jim Crow to "the New Jim Crow." Pivoting and looking back to the antebellum period offers us a more nuanced account of Black legal culture across time and space.

The historiography of litigation for and by Black people during slavery is robust and ever-evolving. Black historians like Luther Porter Jackson (1942) and John Hope Franklin (1943) examined Black legal activity during the antebellum period in their work on free Black property ownership before the Civil War, laying the groundwork for understanding antebellum Black legal consciousness and legal activity. In his contentious work *Roll, Jordan, Roll*, historian Eugene Genovese (1976) argues that Southern courts had to acknowledge enslaved people's humanity—despite white cognitive dissonance that suggested otherwise—although enslaved people had very few rights. Through this hegemony, enslaved people sometimes made legal gains in court but only to legitimize "the law" or slave law. These concessions, white paternalism, and "customary rights" protected the hegemony of white enslavers and laws protecting slavery by creating an appearance of fairness before the law (Genovese 1976; Sinha 2004). Genovese's argument is important because it implies that, even if these concessions were made simply to uphold the existing norms, Black people could sometimes win in court. The scholars considered in this review essay revise—and, at times, outright disagree with—Genovese's argument about the hegemonic function of the law.

Other scholars have revised Genovese's early work on enslaved people's relationship to the law and the courts. Scholars like de la Fuente and Gross (2020), Laura Edwards (2009), Jones (2018), Kennington (2017), and Welch (2018), have demonstrated that during the antebellum period, Black people—enslaved or free, North American-born or Caribbean-born—had an understanding of the law and were able to secure legal victories based on the merits of their legal argument, not paternalism or "the hegemonic function of the law." These Black people were willing to wield their legal knowledge to exercise agency over their circumstances—in some cases, suing for their freedom and, in others, discussing and claiming citizenship rights.[17] In *Double Character*, Gross ([2000] 2006) argues that enslaved people had a "double character" under Southern law. They "had the character of persons in criminal cases and that of property all the rest of the time" (3). Further, law, honor, and the market helped constitute Blackness and whiteness. Notwithstanding efforts by the white Southerners, legal professionals, judges, doctors, and others who tried to prevent enslaved people from speaking their truths, enslaved people's voices were instrumental in creating Blackness and whiteness. Gross argues that "slave masters had no choice but to deal with slaves as people in some respects; to acknowledge that they had preferences, volition,

16. Alexander (2012) argues that mass incarceration recreates some of the conditions of Jim Crow. In my work, I push her argument further to argue that there are many aspects of late twentieth- and twenty-first-century life in the United States that recreates the conditions of Jim Crow.

17. Kimberly Welch (2018) explicitly critques Eugene Genovese's (1976) theory of the hegemonic function of the law in *Black Litigants in the Antebellum South*.

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personality, relationships, families—whether or not their masters chose to override all of these by force" (5). Despite racial mythology arguing the contrary, enslaved people were people, and by asserting themselves in court and through litigation, they became shapers of the law.

Taking a closer look at the relationships between enslaved Black Americans and white Americans, Edwards's (2009) *The People and Their Peace* expands our understanding of how Black people helped shape the law.[18] According to Edwards, "localized law ... recognized multiple sources and sites of legal authority, including customary arrangements and practices, on the ground, in local communities" (4). Local law depended on ordinary people, "even subordinates without rights—who were all considered necessary to the legal process of maintaining the peace" (4). Antebellum white Americans recognized the role that Black people, who were "subordinates without rights," played in protecting the public peace at the local level and gave legal power to their voices under certain conditions.

Building on the historiography about Black resistance and litigation under slavery, in *In the Shadow of Dred Scott*, Kennington (2017) examines freedom suits in Missouri as a window into the formal and informal debates of legal categories like slavery and freedom. She argues that a host of voices contributed to the developing legal culture of slavery in antebellum America and that "enslaved men and women were not merely victims or passive subjects of this development—they were active participants in the conversation" (5). She defines the legal culture of slavery as the specific "areas of law and legal practice related to enslaved individuals" and argues that the "process of freedom suits and the legal culture of slavery ... reveal how daily interactions, personal relationships, and arguments presented in court shaped the legal debate over slavery and freedom" (6). Her work shows us that "the relationships between formal legal institutions and more informal legal processes [were and are] fluid and contested," further creating space for enslaved men, women, and children's litigation and understanding of the law to become a part of the conversation about how law is created and transformed in the antebellum period (6).

In *Black Litigants in the Antebellum American South*, Welch (2018) shifts our attention away from freedom suit litigation toward Black people's suits about property ownership, whether that meant self-ownership or the ownership of personal property. She begins her book with the case of Valerian Joseph, a free Black man who was "violently seized, whipped," and almost kidnapped by two white men in Louisiana in 1857. According to Welch, Joseph "sued [the] two white men, claimed ownership of his body, sought not compensation for missed work opportunities but damages to repair his wounded status, and convinced the courts to seize white property to settle their obligations to him" (1, 6). Through cases like Joseph's, Welch argues that "for black

18. Here, I use Black Americans in reference to enslaved Black people, in part, because they were native-born Americans. They did not have citizenship, but they were American born. Ira Berlin (1998, 2003) charts the different generations of enslaved people in *Many Thousands Gone* and *Generations of Captivity*. In *Lose Your Mother*, Saidiya Hartman (2007) argues that Black people born in the United States who were generations removed from African homelands were not completely African or completely American. Finally, Martha Jones (2018) argues that free-born Black Baltimoreans made claims to birthright citizenship. I would push that beyond free Blacks to apply to all American-born Black people, free and enslaved.

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litigants in the antebellum South, property rights were civil rights: the social and racial climate of the slaveholders' regime did not allow people of color to make their claims through the language of racial equality" (14). According to Welch, "people of African descent used property rights to assert a much broader constellation of rights and privileges, rights that bestowed human dignity, accountability, and claims on the state" (14). Black Americans used the language of the law and of society to secure rights and freedoms that they believed themselves to be entitled to as human beings and as contributors to American society.

Jones's (2018) *Birthright Citizens* takes a different approach as she examines the antebellum legal culture of free people of color in Baltimore. Focusing on how free people of color discussed, claimed, and shaped the meaning of citizenship during the antebellum period, Jones adds a "new [cast of] characters [to] the history of race and rights—black Americans whose stories had long been buried in unopened leather books and case files tied up with red string" (10). According to Jones, "[l]egal historians have examined race and citizenship from three perspectives," including focusing on antebellum treatises on the subject, relying "on the 1857 case of *Scott v. Sanford* to explain the legal status of black Americans," while "still others have looked for the origins of African American citizenship in the era of Reconstruction, with the ratification of the Fourteenth Amendment's birthright citizenship provision" (9). Using "shardlike courthouse records—dockets, minute books, and case files," Jones "pieces together the everyday ways in which African Americans approached rights and citizenship" (10). She uncovers a vibrant vernacular legal culture among free people of color in Baltimore, where they "claimed an unassailable belonging, one grounded in birthright citizenship. No legal text expressly provided for such, but their ideas anticipated the terms of the Fourteenth Amendment" (1). By working across the Civil War divide, Jones finds some of the ideological origins of the Fourteenth Amendment in antebellum Black, or vernacular, legal culture.

In *Becoming Free, Becoming Black*, de la Fuente and Gross (2020) bridge two disparate subfields of the legal history of slavery, considering the history of enslaved people's legal challenges to slavery in the United States and Latin America. Writing into a historiography that traces the legal convergence of slave status and blackness, de la Fuente and Gross tell the "story of enslaved and free people of color across the Americas who sought and shaped liminal spaces in the law through which they could claim freedom for themselves and their loved ones and create communities that challenged slaveholders' efforts to align blackness with enslavement" (4). Their work reminds scholars of litigation for and by Black North Americans during the antebellum period that this legal culture was an international and transnational phenomenon.[19] Further, they argue that "it was not the law of slavery but *the law of freedom* that was most crucial for the creation of racial regimes in law. The laws regulating manumission and freedom suits determined whether it was possible to move from slave to free status, under what circumstances, and whether race would

19. Historians Michelle McKinley (2016) and Bianca Premo (2017) have studied the centuries-long traditions of litigation for and by Black people in the Spanish Empire context. Their work offers important nuance to US historians' study of litigation by and for Black people in the centuries before the American Civil War.

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become a primary basis for claims to freedom" (4–5; emphasis added). They conclude that Black people—enslaved and free—carved out space to claim freedom in various areas of the law, not just freedom suits, in North America and the Caribbean.[20]

Black legal culture (or cultures) is constituted by how Black Americans learned, understood, interpreted, mobilized, and shaped the law and how they shared and sought out knowledge of legal principles. Moreover, many of the legal and cultural themes we find in Black legal culture under Jim Crow have roots in slavery and the antebellum period (Eatmon 2020). The foundations of Black litigants' legal consciousness, education, and networks in the Jim Crow period appear to have been laid during the antebellum period; it is likely that, even during slavery, there was a Black legal culture (or multiple Black legal cultures). Thus, we can gain a more nuanced understanding of Black legal culture(s) by looking at the continuity between antebellum and life after the war rather than viewing the Civil War as a hard historical divide.[21]

## THE ORIGINS OF BLACK LEGAL CULTURE

In 1690, Juana, an enslaved woman in Cuba, entered into a contract with her owner; in return for three hundred pesos, the enslaver would manumit her. Juan Junco Gonzalez, Juana's enslaver, had their contract notarized, ensuring their agreement would hold legal weight. This coartación, as it was called, "transformed [the promise] into a legal obligation that the slaveholder could not evade" (de la Fuente and Gross 2020, 1). In 1808, Nanny Pegee, an enslaved woman in Virginia, was able to sue for her freedom and win because she argued that she had Indian ancestry. She knew that the "Virginia courts had recently declared that Indians were presumptively free" (1). In 1841, an enslaved woman called Asley tested the bounds of free-soil laws, suing for her freedom after her enslaver had taken her from Kentucky, a slave state, to Illinois, a free state. Somehow, Asley knew she could sue for her freedom because of free-soil laws in the North (Kennington 2017, 1). Despite their legal status as property and being prohibited from learning to read and write, these enslaved women learned to wield the law and were not just lay people subject to the hegemonic function of the law. But how did Juana and Nanny Pegee know how to wield the law in their favor? Their legal action

20. De la Fuente and Gross's (2020, 5) work pushes back against "traditional perceptions of a contrast between a radically fluid system in Latin America that recognized the slave as a person, and a harsher binary system in the British colonies that saw the slave only as chattel." For them, the distinction was not simply because of cultural or legal differences between the slave empires. According to de la Fuente and Gross, "[i]t was not a society's recognition of slaves' humanity, nor its racial fluidity, that marked the differences among Cuba, Virginia, and Louisiana. It was how successfully the elites of that society drew connections between blackness and enslavement, on the one hand, and whiteness, freedom, freedom, and citizenship, on the other." Enslaved people challenged the connections that elites tried to make between Blackness and enslavement.

21. Scholars like Dylan Penningroth (2003, 2023), Melissa Milewski (2017), and Brandi Brimmer (2020) examine African American legal activity during the postwar period. Penningroth's work begins in the antebellum period and ends in the postwar period. Brimmer and Milewski include singular chapters that examine the antebellum period, relying on secondary sources and some primary sources, but the bulk of their work examines postwar Black legal activity.

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went beyond being silent participants in trials about them. They were initiators of legal proceedings. With the help of attorneys, they brought suits on their own behalf.

## Legal Culture versus Legal Consciousness

Juana and Nanny Pegee, like many others who had their courage and tenacity, demonstrate that Black people living in the United States—free and enslaved—had a strong legal consciousness and understanding of the law before Reconstruction, before Jim Crow, and before most African Americans had access to formal legal education. While historians rightly place a lot of stock on the fact that many Black people entered freedom illiterate; illiteracy did not indicate a lack of intellect or a lack of ability to learn abstract or complex principles like law. Although enslaved people were prohibited from learning to read and write, this prohibition did not prevent free Black, enslaved, and formerly enslaved people from being able to gain the legal knowledge they needed to litigate and use the law to further their interests.

Legal culture, a phrase coined by legal historian Lawrence Friedman (1975, 194) and captured here by Susan Silbey (2001, 8625), describes "public knowledge of and attitudes toward the legal system, as well as patterns of behavior concerning the legal system. These include judgments about the law's fairness, legitimacy, and utility." In his explanation of legal culture, Friedman (1975, 194) argues that one can speak of "the legal culture of country or a group, if there are patterns that distinguish it from the culture of other countries or groups." However, very few, if any, scholars have contemplated a specifically Black legal culture. To be sure, scholars have studied litigation for and by Black people, legal agency, "upstart claims," constitutional claims, civil rights struggles, formal legal education, and the Black press (Masur 2010; Brown-Nagin 2011; Mack 2012; Jones 2018). They have not characterized these phenomena, however, as a part of a larger and distinctly Black legal culture.

For some, the idea of a Black legal culture may create a false dichotomy, one that sets up Black legal culture in opposition to, or as a foil of, a presumed "white legal culture." The point here is that if we take seriously Friedman's (1975) idea that there can be sub-legal cultures, there can be, and is, a legal culture (or set of legal cultures) specific to the Black experience in the United States. As Friedman (1975, 194) explains, "[t]here are patterns that distinguish [Black legal culture] from the culture of other … groups" or mainstream legal culture, such as having to mobilize the law to prove legal status, legal personhood, one's humanity, and one's entitlement to the privileges and immunities under the constitution in the postbellum period. Rather than set up Black legal culture in opposition to a presumed "white legal culture," I would argue that white legal culture is mainstream American legal culture and that Black legal culture represents a sub-category of that legal culture, where Black people bring their experiences as Black people and their legal consciousness to bear on mainstream legal culture, in turn reimagining law as people know it.

Examining Black legal culture as something specific to Black Americans is essential to understanding law and society in the United States, as is understanding and examining Black legal consciousness. For Silbey (2001, 8626), legal consciousness refers

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to "the ways in which law is experienced and interpreted by individuals as they engage, avoid, or resist the law and legal meanings." For Kennington (2018, 4), legal consciousness, which is a part of legal culture, is "individuals' view of the law, their experience of the law, and the considerations they make when approaching the legal system for assistance." Thus, legal consciousness is an individualized understanding of the law and one's experiences as they relate to the law. In contrast, legal culture is a collective understanding of how the law is created, how the law can be used, and how individuals mobilize the law (4).

Kennington (2018, 6–7) and other scholars have noted that "legal scholarship has largely focused on the contributions of legal professionals—judges, lawyers, and legislators—when discussing the creation of law and legal culture" (see also Eatmon 2020). But these were not the only people making law during the antebellum period, and, surely, they are not the only people making law in the twentieth and twenty-first centuries. During the antebellum period, there was a "broader awareness of legal access and a deeper engagement of enslaved individuals with local and appellate courts than is typically discussed in the scholarly literature" (Kennington 2017, 6). Gross ([2000] 2006, 3) argues that "mundane cases" involving enslaved people "gave legal meaning to, the 'character' as well as the resistant behavior of enslaved people who persisted in acting as people." In other words, cases involving enslaved people conferred upon them the humanity that white enslavers and slave law denied. By acknowledging that enslaved individuals had access to the courts and cases involving enslaved people gave legal meaning to Black people's actions, we can imagine how Black Americans might have used their (legal) creativity beyond slavery to help create law and shape legal culture (Gross [2000] 2006; Edwards 2009).

In a 2019 article, Welch (2019) takes a deeper dive into Black legal consciousness by shifting away from enslaved Black people and Northern free Black people and examining instead the legal records of a Free Black Mississippian, William Johnson. Welch finds that Johnson "knew the law," meaning he "developed robust sets of ideas about law's meaning" and "engaged in a repertoire of moves in the legal arena, interpreting and hypothesizing about the ways that legal notions and principles could be enacted in their own lives. For Black people, "'knowing the law' involved an individual's assumptions, performances, and hunches" (93). Johnson's personal records and legal reflections shed light on how Black people, including Free Black people in the South, developed a legal consciousness and brought their experiences as Black people to bare on the legal process and their daily legal relationships. According to Welch, "as a Black man, Johnson was not a free actor in a society of equals, either before the law or otherwise" (93). With this understanding of his positionality, Johnson made specific decisions about navigating the legal system and interpersonal relationships, including documenting as much as he could about his daily legal dealings. These types of decisions represented Johnson's legal consciousness. Such crucial insights lay the groundwork for asking about Black legal consciousness and Black legal culture(s) under Jim Crow. Black Americans were molders of law and legal culture in slavery, freedom, and the Nadir.

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## Informal Legal Education and Networking

Examples of enslaved people successfully suing for their freedom raise the question of how these litigants gained access to legal information. The works considered in this review essay offer various answers. Some Black people learned about the law and legal proceedings in informal judicial spaces, like county centers or the front steps of the courthouse. Gross ([2000] 2006) argues that because of the interconnectedness of urban centers, Black and white people passed by and spent time in or around courthouses. Kennington (2017, 9) also argues that courthouses and county meeting places were important and that "these crucial meeting places were well known among the enslaved population, who might accompany enslavers to court sessions or pass by while performing their required labor." Building on Gross and Kennington's work, Welch (2018, 9) argues that "courts met in spaces where ordinary southerners gathered—in country stores, on front porches, and under trees. As a result, a wide range of southerners understood the legal process, and this included free and enslaved black people . . . from spreading gossip that whites repeated in court to compelling others to prosecute wrongs done to them to maintain social welfare." For antebellum Southerners, Black and white, there were different geographies of law, but Black Southerners had access to, and an active role in, these spaces.

In addition, Gross ([2000] 2006), Welch (2018), and Kennington (2017) argue that the courthouse, not the Big House, as Genovese (1976) argues, was the center of antebellum life. Gross ([2000] 2006, 6) explains that the "courtroom [was] an arena in which ordinary people experienced and shaped legal meanings." Courtrooms were also contested spaces where Black people could assert their visions of freedom and interpretations of the law. Since antebellum courtrooms did not bar Black spectators, these were spaces where Black people could amass legal knowledge (6). For Jones (2018, 9–10), whose work focuses on free people of color, legal knowledge was shaped and shared in physical and discursive spaces. She reports that free Black Baltimoreans "were students of law, though of a less orthodox sort, gleaning ideas from the world around them." Like the enslaved people in Gross, Kennington, and Welch's works, Baltimore's courthouse was a main stage in developing and creating a legal culture around race and national belonging for Black Americans. For free people of color in Baltimore, the courthouse was "the crucible in which many thousands of black Baltimoreans came to know something about race and law" (Jones 2018, 13).

Enslaved and free people of color demonstrated that illiteracy or a lack of educational opportunities did not bar Black Americans from accessing and using the law. The historiography of legal education suggests that the need for formal legal education is "a relatively new phenomenon in most jurisdictions" and that "early forms of legal education were delivered primarily through observation and training acquired by serving as an apprentice to a legal consultant rather than through formal academic study" (Economides 2001, 8629). In the colonial United States, "the road to the bar went through some form of clerkship or apprenticeship" until the formalization of legal education in the nineteenth century (Friedman 1975, 56). Kermit Hall (1989, 211, 218) reports that "a few law schools had existed before the Civil War, but there was little uniformity in either the method or the substance of the teaching of law." Prior to the Civil War, formal legal education, as we know it, barely existed. Most attorneys

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learned the law through one-on-one tutelage, by observing and listening to someone who studied and practiced law.

By the 1850s, "the emphasis on legal training shifted decisively away from the office and apprentice system toward professional education," and "by 1895 twenty-four states required one to four years of study (or a college degree) before a candidate could take the bar examination, and this number steadily grew thereafter" (Hall 1989, 218). Because of the "separate but equal doctrine" established with *Plessy v. Ferguson*,[22] aspiring Black attorneys attended separate Black law schools, the most prominent being Howard University Law School, which was founded in 1869. Even with the existence of Black law schools such as Howard, the fact that many states required aspiring attorneys to have formal legal education to sit for the bar examination barred many Black people (and women and immigrants) from sitting for the examination and joining state bars. In the face of such obstacles, those with legal education used their access to formal legal institutions to educate other Black people across the African American diaspora informally.[23]

By limiting Black people's access to formal legal education, except through a smaller number of Black law schools, and limiting Black attorneys' ability to join state bars, the white legal profession served as gatekeepers of legal knowledge and legal information. Without access to Black attorneys who might be more trustworthy than white attorneys,[24] this type of legal gatekeeping might have limited legal challenges to Jim Crow. While many scholars have shown how Black attorneys used their admittance to state and federal bars to advance the legal assault upon Jim Crow, these lawyers also used their legal knowledge to democratize legal information and facilitate informal legal education, through such efforts as the National Association for the Advancement of Colored People's (NAACP) legal education opportunities and Black newspaper editors' efforts to educate Black readers on the law, specifically tort law.

## CONTINUITIES IN BLACK LITIGATION

The work of Gross, Edwards, Jones, Kennington, Welch, and de la Fuente, as well as others, shows that Black people brought litigation, pursued legal information, and formed legal networks during a time when they were not considered human beings, legal persons, or citizens. They sought legal knowledge and used that knowledge during a time when the state and individual enslavers prohibited them from learning to read and write. The sheer oppression of slavery did not stop them from wielding the law as a

22. *Plessy v. Ferguson*, 163 U.S. 537 (1896).

23. Legal scholars argue that urbanization and industrialization in the postbellum period, "molded the composition, structure, and training of the bar." Historically, the "professionalization of the law had its roots in the antebellum era," but "it was not until the post-Civil War era that professionalization of law practice surged." Furthermore, Hall argues that, in the postbellum period, "diversity in the bar was a by-product of urbanization and industrialization," although "the social composition of the bar changed more slowly, especially in the south." By the turn of the century, "foreigners, women, and blacks were gaining modest representation." Though Black men had better representation in the legal profession than white women, there were only about two hundred Black attorneys by 1934 (Hall 1989, 211–12, 216–18).

24. In my work, I argue that there were sympathetic white attorneys who took Black cases that challenged Jim Crow violence.

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weapon in pursuit of freedom and bodily autonomy. Using the legal knowledge they amassed through everyday life in the antebellum period, Black people assessed if and when they might have a legal claim. To help with these calculations and to determine their best legal route, Black people—like their free, white counterparts—sought legal counsel. Black plaintiffs always faced the challenge of finding attorneys they could trust with their cases. In some instances, these cases were matters of freedom or enslavement, and, in other cases, they were matters of life and death. Gross ([2000] 2006) finds that white attorneys sometimes took Black people's suits seriously and sometimes did not. We also see in Kennington (2017) and Welch (2018) that some white attorneys litigated on behalf of Black people because they felt they had a moral obligation. Others took Black cases because it was in their financial interest to do so. The works considered in this review essay are essential contributions to the historiography of Black legal history not only because they remind us of Black legal consciousness during the antebellum period but also because they demonstrate that Black people had legal agency and the ability to shape legal culture, even while enslaved.

Black litigation during the antebellum period raises the question of how Black people—some of them enslaved—knew when they had a viable legal claim and when and how to initiate a suit. One theme that arises in the historiography involving Black litigation during the antebellum period, though it was not framed in this way, is Black legal education. One of the ironies of Black litigation, especially that of enslaved people during the antebellum period, is that many were illiterate or presumed illiterate. Numerous scholars have shown that Black Americans entered freedom with political and legal consciousness, though, until recently in the historiography, Black Americans' legal consciousness was overshadowed by their political consciousness. Sometimes, they picked up this knowledge while laboring for their enslavers. Other times, they picked up this information from public venues. Because antebellum courtrooms did not bar Black spectators, and because trials were "important cultural event[s] in people's daily lives," courtrooms were not just contested spaces where Black people could assert their visions of freedom and interpretations of the law; they were also spaces where Black people could amass legal knowledge (Gross [2000] 2006, 6).

Undoubtedly, this line of historical inquiry leaves readers and scholars with more questions about the specifics of how Black people sought and obtained legal knowledge during the antebellum period. It would be easy to imagine enslaved people listening to their enslavers discuss legal matters over dinner or for enslaved people to reach out to attorneys whom they knew were sympathetic to the cause of freedom. Kennington (2017, 29) notes that "it is unclear how knowledge of the correct venue and steps for suing reached illegally enslaved persons, though many enslaved individuals undoubtedly heard about the process through local communication networks." Kennington explains why our knowledge about legal networks during the antebellum period is so limited: the "historical record contains few clues of explanations for how persons held in slavery could learn about and initiate a lawsuit, even when the statute allowed them to bring this type of legal case" (30). As mentioned before, it appears that a "grapevine telegraph," as Kennington calls it—or the "grapevine of the Black South," as historian Thomas Aiello (2018) calls it—was instrumental in the translation and transportation of legal knowledge throughout Black legal networks.

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While I privilege Black litigants as captains of their legal ships, there is some debate about who is creating legal culture, especially regarding Black Americans' experiences. Attorneys were also instrumental in creating antebellum legal culture. Gross ([2000] 2006, 23) argues that "lawyers, who played the role of transmitters of culture as they traveled from town to town, made their careers in the legal practice." Legal culture and its transmission relied on those who understood the legal system. As gatekeepers, attorneys had the most readily available access to legal knowledge. In the postbellum period, Black newspapers and Black mutual aid organizations like the NAACP—and their attorneys—would serve as fountains of legal knowledge and transmitters of Black legal culture. Legal networking has been instrumental in Black Americans' pursuit of rights and justice since the antebellum period. Still, it is easy for scholars and lay readers to take for granted that communities across the antebellum North and South had interracial public spaces, spaces where Black and white people interacted daily. This idea of interracial public spaces in antebellum communities challenges us to think outside the plantation. As Kennington (2017) and Gross ([2000] 2006) both note, public spaces like courthouses were interracial, and Black and white people interacted with each other regularly. Although white supremacy and human bondage were the overarching ideologies of the time, some white people were willing to take on free and enslaved Black people's litigation and their claims.

## BLACK LEGAL CULTURE AND ITS CONTINUITIES

On September 25, 1946, James W. Graves, a Black porter, reportedly submitted an affidavit to a Tennessee chapter of the NAACP after being "blackjacked and shot by a conductor in Mississippi." According to *The Plaindealer*, a Kansas City newspaper, Graves and the conductor, N. B. Kaigler, got into an argument about where Graves instructed two Black passengers to sit on the train. Graves testified that Kaigler hit him in the head with a blackjack and shot him in the chest. Graves alleged he was hospitalized for eleven days due to the injuries Kaigler inflicted upon him. *The Plaindealer* reported that "Illinois Central offered him $750 to settle the case." The company likely offered to settle because its attorneys knew that his case would have merit in court. It is unclear at this point whether Graves sued (*Plaindealer* 1946). However, white Mississippians' abuse of Black men in Mississippi made headlines in Black newspapers in the South and beyond, signaling to readers that suing in civil court was a viable option to gain recourse for racial violence under Jim Crow.

Black civil litigation in the Reconstruction and Jim Crow era was possible, in part, because free and enslaved Black Americans drew on the Black grapevine to gain legal knowledge during the antebellum period. With this realization, there is no doubt that even illiterate Black Americans living under Jim Crow would have had access to legal knowledge and had a thirst for information about how to wield the law to suit their needs. Just because Black people could not read and write did not mean they could not ask questions, listen, process, understand, and share the legal information they learned. Because slavery, as the United States had known it, ended with the Thirteenth Amendment, Black Americans were no longer dependent upon the laws of slavery and

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freedom to secure their rights. They now looked to civil law, like torts, and constitutional law to claim citizenship and personhood rights.

For free people of color during the antebellum period, newspapers were an important discursive space where Black people could debate, articulate their ideas about citizenship, and lean into their legal consciousness. For these informal law students, "their primers were African American and antislavery newspapers and their classrooms, lawyers' offices, ships at sea, and political conventions" (Jones 2018, 13). These newspapers and their conversations in these "classrooms" developed their legal consciousness and allowed them to contemplate the collective legal fate of free people of color. They aimed to secure their place in the United States and to "combat African colonization schemes and black laws" (13). Black Baltimoreans saw their fate as dependent upon how well they understood and could command the law, and newspapers and legal networks were instrumental in this feat.

In my work on Black legal culture under Jim Crow, the post-Reconstruction period, I see the same legal savvy with my Black plaintiffs. I have examined Black legal networks and the networking that the Black press and organizations like the NAACP did for potential Black litigants seeking legal recourse and legal advice (Eatmon 2020). By pivoting toward the antebellum period, scholars can see how later Black legal networks have their roots in Black legal networking during slavery. Black people in slavery and freedom understood the importance of a trustworthy and competent attorney when pursuing legal recourse, especially for white violence. During Reconstruction and the early years of Jim Crow, many Black Americans, specifically those living in the deep south in places like Mississippi, had to rely on sympathetic white attorneys to take their cases. Later in the period, however, potential Black plaintiffs could take advantage of a growing cohort of Black attorneys who eventually became the civil rights attorneys that historians Kenneth W. Mack (2012), Mark Tushnet (1994), Tomiko Brown-Nagin (2011), and others write about. However, before the growth of a critical mass of Black attorneys, Black people had to trust that there were sympathetic white attorneys who would prosecute their cases with integrity.

## THE GRAPEVINE AND POSTBELLUM INFORMAL LEGAL EDUCATION

Even after the Civil War, Black newspapers served as a forum for informal legal education. The Black press transmitted litigation strategies and legal culture throughout the national Black diaspora. Outside the courtroom, Black journalists and newspaper editors created a network of Black communities, connecting Black people across the country to the happenings in other parts of the country. Black newspapers offered a forum where law and legal culture met Black society, ensuring that Black people who did not witness these cases in the courtrooms were aware of what was happening and could consume legal knowledge in church sanctuaries, barbershop chairs, beauty salon washbowls, and fraternity meetings. When damage suits involving racialized violence made the front page of newspapers like the *Chicago Defender*, the *Atlanta Constitution* (Kansas City), the Kansas *Plaindealer*, the *Savannah Tribune*, the *New York Age*, and the *Weekly Pelican*, African American readers in Mississippi and beyond likely had a hard

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time ignoring such cases. It seems plausible that through Black newspapers' cycling of information, African Americans had access to legal knowledge and that Black litigants, editors, and journalists contributed to the development and transmission of Black legal culture and mainstream jurisprudence through their litigation and news reporting.

Like other Midwestern and Southern newspapers, the *Chicago Defender* featured a column committed to providing legal information to Black readers and facilitating self-help. The *Defender* featured a column called "Defender's Legal Helps," where readers could write to ask legal questions.[25] The *Defender* had its legal department within the newspaper, made up of attorneys dedicated to the legal education of its readership who served as the paper's legal counsel. The newspaper's legal department would answer the questions, and the paper published the questions and answers in the column.[26] "Defender's Legal Helps" covered a variety of subjects, including legal matters related to Black people's everyday legal issues, including insurance, contracts, divorce, and duties to tenants.[27] The legal department advised readers on how to deal with assaults, insults, false imprisonment, and police brutality. When agents arrived to repossess goods from one writer, "they began searching [the writer's] house . . . to take the goods by force."[28] A scuffle broke out, and the writer was injured. Curious about possible recourse, the writer asked the *Defender*, "[w]hat can I do for the injury to my person?"[29] The columnist advised that the writer "had a cause of action for trespass" against the people who entered her house and the company that sent them.[30]

Black newspapers were not Black people's only source of legal education, but they had the potential to teach readers new legal maneuvers. By reading Black newspapers, some Black readers probably learned they could sue surety companies that insured police officers and sheriffs. The papers outlined the type of legal argument that attorneys could make on behalf of their Black clients. The historiography of antebellum Black litigation demonstrates that Black people in the United States have had a long history of relying on interpersonal connections to access trustworthy attorneys and legal information. This reliance on legal networks continued in freedom, thanks partly to Black

25. Many of the people who wrote the "Defender's Legal Helps" columnist lived in Chicago, as their questions pertained to local law and institutions. There were some questions that were general enough to have come from people outside of Chicago. Either way, the answers provided in the "Defender's Legal Helps" column circulated throughout Black America.

26. "Defender's Legal Helps," *Chicago Defender*, January 9, 1915, 8.

27. "Defender's Legal Helps," *Chicago Defender*, November 7, 1914, 8; "Defender's Legal Helps," *Chicago Defender*, January 29, 1916, 10; "Defender's Legal Helps," *Chicago Defender*, July 10, 1915, 8; "Defender's Legal Helps," *Chicago Defender*, October 24, 1914, 8.

28. "Defender's Legal Helps," *Chicago Defender*, September 26, 1914, 8.

29. "Defender's Legal Helps," *Chicago Defender*, September 26, 1914, 8.

30. I find it odd that the newspaper did not suggest she sue for civil assault or civil battery for the physical injuries they caused. It is unclear where the writer lived. The writer states that the company sent a wagon, which suggests that the letter writer lived in a rural area, possibly the South. But it is also still possible that the writer lived in Chicago, in which case possibly suing for personal injury and civil assault and battery in Chicago courts was harder. Although a physical injury occurred due to the intrusion, the columnist did not suggest that the letter writer sue for personal damages or civil assault battery for the physical injuries they suffered due to the incident. Maybe the columnist thought trespass would be a more straightforward claim to prove in civil court. Perhaps the columnist thought that suing for civil assault and battery was harder to sell to a jury in the case of repossession from a presumably Black consumer. Regardless, the columnist suggested trespass as the cause of action based on their interpretation of the facts in the letter.

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newspapers and the networks that the Black press created. Black readers—and non-readers—could seek legal guidance and help from the Black press.

Because the *Chicago Defender* was founded by Robert S. Abbott, a Georgia attorney, and had its own team of attorneys, the newspaper had a network of attorneys at its disposal. The "Defender's Legal Helps" column advised Black readers when they needed an attorney.[31] Sometimes, the newspaper used its legal team to connect Black readers who needed legal representation with willing attorneys in their network. On November 14, 1914, a letter writer asked the "Defender's Legal Helps" for advice on behalf of an imprisoned acquaintance; the prisoner's white lawyer was not representing him well. According to the letter writer, the attorney was playing ball with white judges at his client's expense. The prisoner wanted to know what he should do to get better representation and if he was even able to get a new attorney. The columnist advised the prisoner to "send for a reputable colored attorney."[32] And if the prisoner was not permitted to write an attorney, the columnist encouraged the prisoner to "write a letter to the Chicago [*Defender*] Legal Helps for advice and direction."[33] The legal department could offer legal advice if the prisoner could not "send for" a Black attorney. Furthermore, "if the colored prisoner [did] not know a good colored attorney, he should write the Defender Legal Helps, and one will be recommended."[34]

When the "Defender's Legal Helps" column could not recommend a course of action or an attorney, the legal department tried to advocate for letter writers by making phone calls on their behalf or investigating their claims of abuse or corruption. In the same legal column from November 14, 1914, another writer asked if there was "any relief against brutality which a turnkey and storekeeper inflicted upon a colored prisoner … by beating him and putting him in a dungeon?" According to the columnist, the prisoner could find relief. The newspaper did not suggest an attorney, but it did request that the writer send the facts and details of the incident to "the *Chicago Defender*, and the proper representations will be made to the jail authorities and the sheriff."[35]

It was through this network and forum, I argue, that Black legal culture was shaped and transmitted. Through their coverage of damage suits involving white-on-Black violence and insult, Black newspapers incorporated litigation strategies developed in civil lawsuits involving white-on-black violence into a Black legal culture (or cultures). Black editors' and journalists' coverage of these cases alerted readers to the fact that Black people were suing railroads, bus companies, and states while also connecting Black readers to lawyers. Furthermore, Black newspapers provided Black readers with the facts of cases that went to trial, offering Black readers a benchmark against which to measure their experiences of violence and determine if their case might warrant civil action. While case records provide glimpses of race relations and white-on-black violence from the top down, describing the doctrine shaping the presentation of the facts, newspapers offer a view from the bottom up.

31. This was a very frequent response. See, for example, "Defender's Legal Helps: Police Court Troubles," *Chicago Defender*, July 10, 1915, 8; "Defender's Legal Helps: Receiving Stolen Property," *Chicago Defender*, August 15, 1914, 8; original emphasis ("[y]ou *should consult* an attorney at once concerning the matter").

32. "Defender's Legal Helps: Lawyers in Jail," *Chicago Defender*, November 14, 1914, 8.

33. "Defender's Legal Helps: Lawyers in Jail," *Chicago Defender*, November 14, 1914, 8.

34. "Defender's Legal Helps: Lawyers in Jail," *Chicago Defender*, November 14, 1914, 8.

35. "Defender's Legal Helps: More Trouble in Jail," *Chicago Defender*, November 14, 1914, 8.

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## BLACK LEGAL ARCHITECTS

As Black Americans carved out space for themselves within the law, the law shifted and adjusted to work around the types of litigation strategies that they used. The law worked around Black people when Black people used the law well. Black Americans were not just change agents but also law shapers, even without a formal legal education. African Americans' lived experiences and legal decisions forced the legal system to respond to them, and during the antebellum period, they did this even without legal personhood. Black litigants forced white Southerners to employ and depend on what historian Eugene Genovese (1976) called the hegemonic function of the law. In the civil context, litigation for and by Black people forced white judges and jurors to admit that violence that characterized and maintained Jim Crow warranted monetary damages, legal recourse, and retributive justice. Legally, Jim Crow violence was not permissible, and a price had to be paid. Criminal courts may have turned a blind eye to Jim Crow violence, but when Black people brought legal actions in civil court, Jim Crow courts had to confront Black people's rights of personhood and the contradictions of white supremacy.

## CONCLUSION

While I have argued in my own work that the type of litigation, litigation strategies, and legal networking that we see in the twenty-first century has its roots in the Jim Crow era (Eatmon 2020), reading the work of de la Fuente and Gross (2020), Edwards (2009), Jones (2018), Kennington (2017), and Welch (2018) shows us that the Black litigation strategies of the Jim Crow period, in turn, had their roots in the antebellum period. When we observe Black people's litigation for white vigilante violence and police brutality in the twenty-first century, we should be reminded that Black people have always taken laws that were meant to oppress Black people and used them as weapons to protect their bodily integrity and self-ownership and to pursue rights of personhood and human rights. Black people taught themselves and each other how to do so through the courts, opening the law that was usually foreclosed to them and, in so doing, asserting their humanity and their rights.

I invite scholars to challenge and rethink our periodization or, at the very least, to be more intentional about looking to earlier periods for the roots of the legal, cultural, and historical developments that we see in the periods and geographies we study. I specifically invite legal scholars to embrace the idea that there is a distinctively Black legal culture. This legal culture is specific to the forms of legal oppression that Black Americans have faced in slavery and freedom. The works discussed in this review essay demonstrate how Black people shaped the "legal culture of slavery," and my current project will show how Black Americans' experiences under Jim Crow helped shape tort law as we know it. Building on the works of the scholars I have discussed here, I invite readers to reimagine the possibilities of how Black freedom struggles have shaped American civil law. If Black legal culture can be traced back to slavery, what does this tell us about the nature as well as the imagination of the Black freedom struggle; about the value of networks that shared news about legal proceedings—whether they were

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more formally organized in the NAACP or less formal—but all the same important community gathering spots, sharing news and newspapers and learning about new developments in the law; about how far we have come versus how far we have to go as a country; and, finally, what does it tell us about individual Black Americans' relationship with the law? Perhaps, Black Americans' experiences have helped shape the law beyond civil rights, and it might be worth reevaluating the extent to which Black Americans have been shapers of American law from slavery to freedom and beyond.

When we take seriously the work on antebellum litigation for and by Black people, it becomes clear that what we see in the twenty-first century is a legal tradition, a legal culture, that was born during the antebellum period but was shaped, molded, and transformed during Jim Crow. Black people in the United States have always used the law creatively. They have always been lawmakers from the bottom up. Historically, Black Americans have wielded the law as a weapon to force white people to confront the contradictions of white supremacy. Black Americans are creators of law, and, despite centuries of oppression, they are legal "scholars" in in their own right.

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