

Draft of August 28, 2016.

Fall Term 2016

THE LAW IN SLAVERY AND FREEDOM: FROM THE HISTORICAL TO THE CONTEMPORARY

Law 877: 001. Prof. Rebecca J. Scott

236 Hutchins Hall, Mondays, 4:10 to 6:10

2 credit hours (with the option of 1 additional research credit hour as a Law 900 add-on)

In this seminar we will explore the ways in which slavery, long defined in the Americas as the ownership of property in human beings, interacted with the structures and practices of law in the United States and in the Caribbean and Latin America. We will examine how law addressed the category of “slave” and codified the power of slave owners, and how those held as slaves interacted with legal institutions and practices, both civil and criminal. We will also ask when and whether that law sometimes provided a means by which to exit the status of slave and find formal freedom.

In two sessions near the end of the semester, on November 14 and November 21, we will discuss contemporary slavery and human trafficking, and explore legal strategies that have been employed to combat such practices, including the use of domestic criminal and labor law (in Brazil and the United States), and international law (particularly in the Interamerican Commission on Human Rights, and in the European Court of Human Rights).

Course readings include works by legal scholars and historians, a key memoir (*Twelve Years a Slave*), and a court transcript from West Africa, as well as files from several court cases in the United States. We will pay particular attention to two cases that reached the U.S. Supreme Court (*The Antelope*, 23 U.S. 66 [1825] and *Prigg v. Pennsylvania* 41 U.S. 539 [1842]); to one from the Louisiana Supreme Court (*Eulalie v. Long & Mabry* [1856]); and to the 1876 British colonial case of Abina Mansah from the Gold Coast. For the modern period, we will examine *C. N. & V. v France*, before the European Court of Human Rights (2012); the case of José Pereira before the Interamerican Commission on Human Rights (2003); and three U.S. federal cases.

Each student will submit one short paper on September 12 (3 to 4 pages) and a research prospectus on November 7 (5 pages, plus two pages of annotated bibliography), followed by a substantial final paper (16 to 20 pages, 4,000 to 5,000 words). Students wishing to carry out more extensive primary research may also enroll for one supplementary credit of directed research (as Law 900), in which case their final research paper will be 24 to 28 pages, 6,000 to 7,000 words, and will draw on research in additional primary sources. (This course meets the Upper-Level Writing Requirement for all students, except for 2016 Fall Starters choosing it as an elective.)

Panels

Four student panels will be formed in the seminar, each of which will prepare a collective oral presentation focused on a case or episode that highlights relationships between law and slavery:

Panel 1. Kidnapping or commerce? *The Antelope*, 23 U.S. 66 (1825) [present on Week 6]

Panel 2. Conspiracy or personal feud? The murder investigation in *Death of an Overseer* [present on Week 7]

Panel 3. Free woman or fugitive? *Prigg v. Pennsylvania* (1842) [present on Week 8]

Panel 4. Litigating status: *Eulalie v. Long & Mabry* (1856) [present on Week 10]

A week in advance of their presentation, members of the panel will choose and circulate a packet of approximately 30 pages of primary and secondary documents on the case for reading by the entire class. At the assigned session, the panel will distribute a prepared handout, and each member will present a specific aspect of the case.

Laptop and Tablet Use

To make it easier for everyone to concentrate on discussion, no laptops, tablets, or other electronic devices are to be used during the sessions of the seminar. Please bring all materials to class in paper form, marked up as necessary.

Course Grading

The goal for the course is for each student to acquire an understanding of the dimensions and variability of formal law governing slavery, with an emphasis on change over time, framed by the role that slavery played in the economy and society of different polities. Building on this understanding, each student is expected to learn how to draw from primary sources a complex analysis of the dynamics of law in action in a specific setting, to be demonstrated in the panel presentation, the prospectus, and the final paper. Grades for the course will be calculated based on the following guidelines:

- Informed participation in class discussion (including Canvas discussion board) [40%].
- 3- to 4-page short writing assignment [5%].
- 5-page prospectus [10%]
- Presentation in the panel discussion on selected cases (including 1-pg handout) [15%].
- Final paper [30%].

Readings

Copies of the following three books have been ordered in paperback editions at Ulrich's and other local bookstores. They are also on reserve in the Law Library Reserve Room:

Ira Berlin, *Generations of Captivity* (Harvard University Press, ppbk).
Solomon Northup, *Twelve Years a Slave* (LSU Press paperback edition much preferred).
Trevor Getz and Liz Clarke, *Abina and the Important Men* (Oxford University Press). **second ed.**

Additional readings will be on reserve (physical and/or electronic), and posted on the Canvas site.
Electronic reserves at the Law Library are accessed through <http://lexcalibur.lib.law.umich.edu>.

SCHEDULE OF SESSIONS

Week I. Monday, August 29.

Introduction to Course Procedures. Preliminary Discussion: Examining slavery and freedom in historical perspective. The problem of law and slavery.

Required readings:

Ira Berlin, *Generations of Captivity*, prologue, pp. 2-19.

Letter of Octave Johnson, February 1864, in Ira Berlin et al., eds., *The Destruction of Slavery*, p. 217.

Letter of Joseph J. Harris, 27 December 1864, in Ira Berlin et al., eds., *Freedom's Soldiers*, p. 140.

First day's assignment: Bring paper copies of the two letters with you to class. What kinds of implied concepts of rights, reciprocities and obligations show through these texts?

Monday, September 5 is Labor Day. There will be no class

Week 2. Monday, September 12 .

Slavery in the making of the Atlantic world. Laying the legal groundwork for enslavement.

Required readings:

Berlin, *Generations of Captivity*, chap. 1 ("Charter Generations") 23–49.

Selections from the law code of Alfonso X El Sabio (1221–1284), king of Castile, as reproduced in Samuel Parsons Scott, translator, and Robert I. Burns, S.J., editor, *Las Siete Partidas* 5 volumes (Philadelphia: University of Pennsylvania Press, 2001). I have included the introduction, which you can skim, as well as the following laws for careful reading:

Volume Three. The Third Partida.

Title XVI. Concerning Witnesses. Law XII and Law XIII [pp. 670-671]

Title XXIX. Prescription. Law III, Law V, Law XXIII, Law XXIV, Law XXV [pp. 838-839, 847]

Volume Four. The Fourth Partida.

Title V. Concerning the Marriages of Slaves [pp. 901-903]

Title XXI. Slavery; Title XXII. Freedom; Title XXIII, Status [pp. 977-987]

The *Code Noir*. Translated excerpts in Dubois and Garrigus, *Slave Revolution in the Caribbean, 1789-1804*, pp. 49–54. [Original in French also on Canvas for those who are interested.]

Selections from the Louisiana Civil Code of 1825 [On Canvas]

Writing assignment #1 (approximately 3 pages, due in class on Sept. 12). Choose some particular sphere of slave life regulated by law (such as marriage, manumission, or the ownership of property by slaves), and reflect on the similarities and differences that you see in the codes or laws of any two different kingdoms, colonies, or territories (medieval Spain, the French Antilles, the state of Louisiana). *Please post a brief (3-sentence) description of your comparison on the Canvas Discussion board, to facilitate our conversation in class.*

Week 3. Monday, September 19.

Slavery in plantation societies in the 17th and 18th centuries. Legal pluralism, challenge, and contradictions. Early anti-slavery.

Required readings:

Ira Berlin, *Generations of Captivity*, chap. 2 (“Plantation Generations”), 53–96.

Richard Grey, “The Papacy and the Atlantic Slave Trade: Lourenço da Silva, The Capuchins, and the Decisions of the Holy Office,” *Past and Present* 115 (May 1987): 52–68.

Malick Ghachem, “Prosecuting Torture: The Strategic Ethics of Slavery in Pre-Revolutionary Saint-Domingue (Haiti),” in *Law and History Review* 29 (November 2011): 985–1029.

How does opposition build to an institution as well-entrenched as slavery in the 17th and 18th century Atlantic worlds? What interpretations of law support or oppose the critique?

Week 4. Monday, September 26.

The Haitian Revolution, anti-slavery, and the impact of shifting jurisdictions.

Required readings:

Laurent Dubois, *Avengers of the New World*, chaps. 4–7 (pages 91–170).

Ada Ferrer, “Haiti, Free Soil, and Antislavery in the Revolutionary Atlantic,” *The American Historical Review* Vol. 117, No. 1 (February 2012), pp. 40–66.

NOTE: At the September 26 session, we will form the four panels, based on student preferences. *Please take a look at the cases discussed in each of the four panels, and post your first and second choice to the Canvas discussion board.* We will set aside some time at the end of class for each group to meet, to exchange ideas and email addresses, so that the members can arrange to meet outside of class to allocate responsibilities among themselves. The first task of each group will be to locate the key sources and select 25 to 30 pages of primary and secondary material on their case to assign for the whole class to read.

Week 5. Monday, October 3

Persons as property in the age of revolutions.

Required readings:

Berlin, *Generations of Captivity*, pages 99–140.

Morris, *Southern Slavery and the Law*, Part II, “Slaves as Property,” pp. 61–80.

Rebecca J. Scott, “Paper Thin: Freedom and Re-enslavement in the Diaspora of the Haitian Revolution,” in *Law and History Review* 29 (November 2011): 1061–1087.

Question for discussion: What does it mean to say that Adélaïde Métayer “was” or “was not” a slave in, for example, in Saint-Domingue in 1800? In Baracoa in 1807? In New Orleans in 1810?

At the October 3 session, we will discuss possible research topics for students’ papers. *Please post on the Canvas Discussion Board your first pass at a proposed paper topic.*

Week 6. Monday, October 10.

Bans on the international trade in African captives, and violations of those bans: The cases of the ships *Antelope* and *Amistad*.

Required readings:

David Brion Davis, *Inhuman Bondage*, chap. 1. “The *Amistad* Test of Law and Justice,” pp. 12–26.

Selections from the trial record and opinion in the case of the *Antelope* 23 U.S. 66 (1825), plus

excerpts from secondary literature on the case, including Jonathan Bryant, *Dark Places of the Earth: The Voyage of the Slave Ship Antelope* (packet to be compiled by members of Panel 1.)

Presentation of the Antelope case by Panel #1.

Fall Recess is Monday, October 17, and Tuesday, October 18. CLASS WILL MEET ON OCTOBER 19, A WEDNESDAY THAT IS DESIGNATED BY THE LAW SCHOOL AS A 'MONDAY'.

Week 7. WEDNESDAY, October 19.

The exercise of authority inside and outside the law: Slaveholders interrogating enslaved suspects.

Required readings:

Michael Wayne, *Death of an Overseer: Reopening a Murder Investigation from the Plantation South*, pages to be selected by members of Panel 2.

Primary materials on the case discussed in *Death of an Overseer*, selected by Panel 2.

Presentation of Death of an Overseer by Panel #2.

Assignment: In class on October 19 each student should submit a 1 page sketch describing the topic of his or her research project, accompanied by a list of the key relevant sources that have been located (hence two pages total). We will discuss these in class, and the sketches will be returned to you with comments on October 24.

Week 8. Monday, October 24.

Personal liberty laws, fugitives from slavery, and the complexities of federalism.

Required readings:

Berlin, *Generations of Captivity*, chap. 4 (“Migration Generations”), 161–244.

H. Robert Baker, *Prigg v. Pennsylvania: Slavery, the Supreme Court, and the Ambivalent Constitution*, pp. 1–8.

[Primary and further secondary readings on Prigg to be assigned by Panel #3]

Presentation of Prigg v. Pennsylvania (1842) by Panel #3.

Week 9. Monday, October 31.

The phenomenon of illegal enslavement and challenges to it.

Required reading:

Solomon Northup, *Twelve Years a Slave*, including the introduction from the LSU Press edition, which has been posted on Canvas.

As you read Northup's account, please make a note of each point at which he engages law or some form of administrative process. In class we will work through the account, and see whether we can collectively assemble a full inventory and analysis of those moments when law either entangles or empowers him, or both.

During the final portion of class on October 31 we will go around the table and have students briefly describe their ongoing research projects. *Please post the working title of your paper to the Canvas discussion board by 5PM on October 30.*

Week 10. Monday, November 7.

Citizen, subject, property? Freedom suits, juridical personality, and the question of claims-making. Examples from the mid-19th century.

Required readings:

Trevor Getz and Liz Clarke, *Abina and the Important Men*, [Second edition], Parts I, II, III, V.

Eulalie v. Long & Mabry, decision + case records to be chosen by Panel #4. [Decision is on the Canvas site; an abridged transcription of the manuscript Louisiana Supreme Court case file is available from the instructor.]

Presentation of Eulalie v. Long & Mabry by Panel #4.

Second graded writing assignment, **due by 5 P.M. on Wednesday, November 9**, to the instructor's mailbox on the 9th floor of the Legal Research Building: Prepare a 1,250-word (5 pages, *double-spaced, full margins*) prospectus for your research paper, accompanied by a page or two of annotated bibliography indicating the major sources that you have located and consulted. The prospectus, which can incorporate material that will eventually become part of your paper, should lay out the key questions, and suggest the ways in which the materials you have located will enable you to address those questions. Be sure to define the scope of the paper in such a way as to enable you to complete it successfully by the end of the semester.

Week 11. Monday, November 14.

International Law, Domestic Law. Strategies for combating contemporary labor conditions “analogous to slavery.” Identifying those who hold others “as slaves.”

[Special guest: Judge Carlos Henrique Borlido Haddad, of the Brazilian federal criminal courts.]

Required Readings:

United States v. Booker, 655 F.2d 562. (United States Court of Appeals, Fourth Circuit. Decided 1981). Conviction based on 18 U.S.C. 1583, 1582, and 1584 [derived from the 1866 Civil Rights Act, as amended and consolidated in 1948].

Interamerican Commission on Human Rights, Report No. 95/03, Petition 11,289. Friendly Settlement, José Pereira, Brazil, October 24, 2003. [On-line access to text: <http://www.cidh.org/annualrep/2003eng/Brazil.11289.htm>.]

Rebecca J. Scott, Leonardo Barbosa, Carlos Henrique Borlido Haddad, “How does the law put an analogy to work?: Discerning ‘a condition analogous to that of a slave’ in contemporary Brazil.” [unpublished; please do not cite or circulate]

[Supplementary/ Optional: Sakamoto, Leonardo, “‘Slave labor’ in Brazil.” In: Beate Andrees, Patrick Belser, eds., *Forced Labour - Coercion and Exploitation in the Private Economy*. London: Lynne Rienner; ILO, 2009, pp. 15-33.]

Assignment: Judge Haddad has presided over dozens of cases in which the imposition of labor “in conditions analogous to slavery” was alleged. He now co-directs the first law school clinic in Brazil designed to represent victims of such conditions. Please prepare a question for Prof. Haddad, and post it on the Canvas Discussion Board on Sunday, November 13, by 5 P.M. ,to allow time for me to convey the questions to him.

Week 12. Monday, November 21.

Conditions of vulnerability: Refugees, migration, and contexts of coercion. Critiques of the analogy with historical slavery.

Required readings:

U. S. v. Bradley 390 F.3d (1st Cir. 2004).

U. S. v. Calimlim 538 F.3d 706 (7th Cir. 2008)

C.N. & V v France (ECtHR, 2012).

Laurel Bellows, “The Modern Abolitionist Movement: How Lawyers, Litigation, and Legislation Can Combat Trafficking in Persons,” *International Law News* 42 (Fall 2013): 1, 4–7.

[an additional essay, t.b.a.]

Week 13. Monday, November 28.

Reflecting back on the achievement of legal freedom in the United States, the recognition of new rights, and the subsequent narrowing of those rights.

Berlin, *Generations of Captivity*, Epilogue (“Freedom Generations”) 246–270.

The Thirteenth Amendment to the U.S. Constitution

The Civil Rights Act of 1866

The Civil Rights Act of 1875, largely overturned in the Civil Rights Cases 109 U.S. 3 (1883).

Richard Pildes, “Democracy, Anti-Democracy, and the Canon,” *Constitutional Commentary* 17 (2000): 295–319.

Final Papers

Guidelines for the final papers, which are due by 5 PM on Friday, December 2.

Each paper will deal with a topic related to the panel of which the student is a member. The choice of the specific topic is up to you, subject to approval by the instructor. The paper should be from 16 to 20 pages (4,000 to 5,000 words). Those enrolled in Law 900 for an extra hour of research credit should draw on additional manuscript or printed primary materials; their papers should be from 24 to 28 pages (6,000 to 7,000 words).

Be sure to follow a consistent standard citation form – either Blue Book or Chicago Manual of Style (a link to the short version of the Chicago Manual format is on the Canvas site.). Edit and proofread carefully. Submit a **paper copy** to Prof. Scott’s mailbox, 9th floor, Legal Research, and then post a backup copy (in MSWord, Wordperfect, or pdf) on Canvas, which links to MBox. Papers will be evaluated on the clarity of the argument, the use of evidence to support the writer’s assertions, and the linking of the analysis to the broad themes discussed in the course.

Please use 12 point typeface throughout (including the footnotes or endnotes), leave 1 inch side margins to allow room for comments, and **double-space** your text.