

Tentative syllabus. 26 October 2014.

Fall 2014. Law 885:004.

Legislating and Litigating to Combat Slavery and Human Trafficking:
From the Historical to the Modern

Instructor: Rebecca J. Scott (Professor of History and Law)

Journalists, scholars, and some jurists often use the seemingly anachronistic term “slavery” to describe modern forms of exploitation that, while not involving the ownership of persons as property, contain elements in common with chattel slavery. This seminar brings together students, faculty, and practitioners to discuss specific ways in which slavery has been defined and challenged in the past, and ways in which it is being defined and combatted in the present.

Our initial sessions will focus on historical accounts of illegal enslavement in the nineteenth century, with examples from Louisiana, Brazil, and British West Africa. We will examine continuities in the difficulty of defining the term “slavery,” and obstacles to access to law by individuals subject to illegal enslavement.

We will then shift to the twentieth and twenty-first centuries, looking at labor law and criminal law in Brazil, and at the Palermo Protocol and legislation aimed specifically at human trafficking, including, in the United States, the Trafficking Victims Protection Act.

On Saturday, December 6, students in this seminar will attend an international workshop at UM Law in which practitioners from France, Britain, Brazil, Argentina, and the U. S. will share experiences, strategies, and insights from their own experiences.

The concluding seminar session on December 11 will look at legal frameworks for defining slavery under international law, including the 1926 treaty prohibiting “the exercise over a person of any or all of the powers attaching to a right of ownership,” and recent decisions on “slavery and involuntary servitude” by the European Court of Human Rights. We will also discuss the ongoing controversy in Brazil over the implementation of a new constitutional amendment raising the penalties for the employment of labor in “conditions analogous to slavery.” This year the question of how to define slavery has again become a point of intense political contention, with large-scale landowners in Brazil seeking to excise the law’s reference to “degrading conditions of work.”

Schedule of Sessions. (All sessions except the one on December 6 will be held at the home of Professor Scott, 1106 Lincoln Avenue, Ann Arbor, from 7 to 9 PM.)

SESSION 1: October 30. Introduction. What should go into a definition of slavery?
Deep background: “freedom suits” and illegal enslavement in the 19th century.

Reading: Rebecca Scott, “Paper Thin: Freedom and Re-enslavement in the Diaspora of the Haitian Revolution,” *Law and History Review* 29 (November 2011): 1061 - 1087. (PDF available on the course CTools site, folder “Illegal Enslavement in the 19th century.” For a hint of the relationship of this essay to questions of contemporary slavery, see footnote 30.)

SESSION 2: November 13. Discussion of a classic memoir of illegal enslavement. Obstacles to legal protection, and the failures of anti-kidnapping statutes.

Reading: Solomon Northup, *Twelve Years a Slave*.

As you read, pay particular attention to the various modes and moments in which Northup’s experience intersects with law. I will post some further information on CTools on the efforts, both before and after the memoir was published, to prosecute those responsible for his enslavement.

SESSION 3. November 20. Enforcing prohibitions on enslavement: the role of the British government in the nineteenth century. Was individual litigation a feasible anti-slavery strategy?

Reading: Trevor R. Getz and Liz Clarke, *Abina and the Important Men* (Oxford University Press, 2012), parts I, II, and III (pages 1-111).

Guest participant: Prof. Beatriz Mamigonian, Federal University of Santa Catarina, Brazil, a specialist on “liberated Africans” in nineteenth-century Brazil, those removed from ships engaged in the illegal transatlantic trade in African captives.

SESSION 4. December 4. Inspection, mobilization, and litigation: the modern campaign against “labor in conditions analogous to slavery” in Brazil; international agreements on human trafficking.

Reading: Article 149 of the Brazilian Criminal Code.

Ruling of the Inter-American Commission on Human Rights Report 95/03. José Pereira. Selections from the Palermo Protocol and the Trafficking Victims Protection Act.

Guest participant: Judge Carlos Henrique Borlido Haddad, of the Brazilian federal judiciary, who recently presided over a set of important cases in the region of Marabá. We will view the video Frente de Trabalho, produced by the Union of Labor Inspectors.

SESSION 5. December 6: Special Saturday session at the Law School [details to follow]

SESSION 6. December 11. Defining slavery under international law; struggle over definitions when implementing domestic law.

Guest participant: Leonardo Barbosa, staff attorney, Brazilian Chamber of Deputies, who has been following the drafting of the statute to implement the recent constitutional amendment raising the potential penalties for the employment of slave labor.