12 January 2009.

Winter Term 2010


THE BOUNDARIES OF CITIZENSHIP:

INCLUSION, EXCLUSION, AND THE HISTORY OF CIVIL RIGHTS UNDER LAW, 1787-1915

Monday and Wednesday, 10:40-12:05
Room 236 Hutchins Hall (Law Quad)

Rebecca J. Scott
Office hours: Wednesdays 1:45-3:45 (969 Legal Research)

This course explores the changing boundaries and content of state and national citizenship, from the period of slavery to the early twentieth century. The core question is: How was membership in the social and political community defined for men and women in the United States, and how were those definitions changed over time? We will examine the genesis and meanings of legal freedom and formal citizenship for former slaves, for immigrants, for Native Americans, and for residents of territories acquired or conquered by the United States. We will at several points juxtapose evolving concepts of citizenship in the United States with those developed in France and in the colonies of France.

The course will link the methods of historical research with those of legal scholarship, emphasizing the social dynamics that lie behind legal cases, and the legal constraints that operate on social processes. Readings for the course draw on state and federal Supreme Court cases, including the attorneys’ briefs from the trial court records. We will also read interpretive works of history and law, Congressional and trial court testimony, and 19th century newspaper reports.

Students will be grouped into five panels, and each panel will take responsibility for studying and presenting a key legal case in historical context. These presentations will explore how competing conceptions of citizenship emerged, were written into
constitutional texts and statutes, and were challenged. These cases will be *U.S. v. Cruikshank*, *Hall v. Decuir*, *The Civil Rights Cases*, *Plessy v. Ferguson*, and *Gonzales v. Williams*.

The format of the course, which meets twice a week for an hour and twenty-five minutes, is lecture and discussion (both in class and sometimes on CTools). Each student will participate in his or her panel’s preparation of a case for oral presentation, and will write a ten-page final research paper on some aspect of that case. There will be a midterm exam.

The course is open to law students through the regular Law School registration procedure. LSA and Rackham students with a strong research background may be admitted by permission of the instructor only, and will enroll in the course as History 477:001.

Copies of two paperback books will be available at the usual bookstores, including Ulrich’s:


*Plessy v. Ferguson: A Brief History with Documents*, edited by Brook Thomas (Bedford/St. Martin’s Press, 1997).

Many of the readings will be available as pdf files on the CTools site. The books are on reserve at the Shapiro Library and at the Law Library. Full records of Supreme Court Cases can also be accessed through the Law Library portal.

Grades in the course will be based on a combination of class participation (including in-class discussions and the group panel presentations), the midterm exam, the research prospectus, and the final research paper.

*Schedule of Topics*

**Week I.** First class. Wednesday, January 13. Introduction to the course and its procedures. Framing the core questions: What is citizenship? In what ways might being a citizen be different from being a national or a subject? Contrasting French and Anglo-American conceptions of national citizenship. Can there be “degrees” of citizenship? What are the links between formal citizenship and day-to-day struggles over its meaning?

*Readings:*

Patrick Weill, *How to be French: Nationality in the Making since 1789*, Introduction (pp chap. 1 (pp. 1-29); pages on the law of 1889 (pp. 52-53); Conclusion (pp. 250-254); glossary and notes (pp. 255-279).

[Please read both selections before the first meeting of class.]

**Monday, January 18. Martin Luther King Day.** No class; you are encouraged to attend the University symposia, including the presentation by Saul A. Green, former United States Attorney for the Eastern District of Michigan, “New Challenges and the Same Old Pitfalls,” 4 PM, Room 250, Hutchins Hall.

**Week II.** Wednesday, January 20.
Spoken and unspoken citizenship: The Constitutional framework and the compromises on slavery. The age of Atlantic Revolutions and the possibilities for an expanded citizenship.

*Readings:*

U.S. Constitution.


Laurent Dubois, *A Colony of Citizens: Revolution and Slave Emancipation in the French Caribbean*, chap. 3

*Supplementary:*


**Assignment** for in-class discussion on Wednesday: Using a copy of the U. S. Constitution and the first ten Amendments, underline all sections where you think some element of citizenship or nationality is spelled out or implied. Based on this document alone, how would you define the boundaries of citizenship, both in terms of inclusion and in terms of content?

**Week III.** Monday, January 25, and Wednesday, January 27.
How did citizenship emerge in the early nineteenth-century United States, given the lack of a formal definition of it in the Constitution? Were women citizens, and if so, what kind of citizens? What was the legal status of Native American communities and individuals?

Readings:


Cherokee Nation v. Georgia (1831) and Worcester v. Georgia (1832). Selections.

Tiya Miles, Ties that Bind: The Story of an Afro-Cherokee Family in Slavery and Freedom. Introduction (pp. 1-8) and Chaps. 8 & 9 (pp. 149-178).

Week IV. Monday, February 1, and Wednesday, February 3.

The extension of territory; the extension and contraction of rights. The Fugitive Slave Law. Were free persons who were categorized as “of color” construed as citizens of the states or of the United States?

Readings:

Prigg v. Pennsylvania (1842), [selections from decision].


Fugitive Slave Law of 1850.

Frederick Douglass, "The Meaning of July Fourth for the Negro" [1852]


Supplementary:

**Assignment:** On Wednesday, February 3, students will divide into the five panels that will work together for the balance of the semester: *U. S. v. Cruikshank, Hall v. Decuir, Civil Rights Cases, Plessy v. Ferguson, Gonzales v. Williams*. The full Transcripts of Record for each case—including attorneys' briefs, testimony, and lower court decisions— are available on-line through Electronic Resources at the Law Library. Paper copies of most of the cases can also be found in the Law Library and (for LSA/Rackham Students) on University Reserves in the Shapiro Library. Various additional sources have also been posted on Ctools, and a list of sources is available in the Ctools folder marked “Bibliographies for research.” Briefly review enough of the relevant materials to decide which case you would like to work on, and convey your preference to the instructor in person or by email by 5pm on Monday, February 1. (Please make a first and second choice).

**Week V.** Monday, February 8, and Wednesday, February 10. Preparation for Selection of Research Topics. How does one define a legal-historical research topic? What kinds of sources can be used?

This week we will interrupt our chronological progression in order to preview the cases to be discussed by the panels, and to frame the selection of individual research topics. We will focus on the nature of legal-historical research, and modes of analyzing the relationship between doctrine and context.

One speaker from each panel will present a 5-minute summary of the case, and all members of the panel should begin to review the bibliography related to that case. Another member of the panel will present a synopsis and analysis of the selected example of a legal-historical essay related to the case or core issue in question [see ‘Readings for each panel,’ below].

**Readings for all:** What does it mean to conceptualize law and society as “mutually constitutive”? What kinds of research strategies might this approach suggest?


**Readings for each panel:** The members of each panel should read the essay or chapter linked to their case, and be prepared to discuss it in class:

Panel 1: *U.S. v. Cruikshank*, vigilante violence, and obstacles to the protection of rights by the states.

Panel 2: *Hall v. DeCuir* and the context for the assertion of public rights during Reconstruction. 

Panel 3: *Civil Rights Cases* and the question of state protection of rights, revisited. 

Panel 4: *Plessy v. Ferguson* and conceptual frameworks for legal challenges to the white supremacist project. 

Panel 5: *Gonzales v. Williams* and the question of citizenship in the territories. 

**Assignment:** In addition to the full case transcripts available on paper and electronic reserve, a select bibliography of source materials available for each of the five cases will be posted on the CTools site. Please review the section of the bibliography relevant to your case, and decide which aspects of your case and its context you wish to explore further in your research paper. 
On Monday, **February 15**, please submit a one-page description of the questions you plan to explore in your research paper, accompanied by the sources you have initially located that can help you find ways of addressing them (including appropriate sources from the Bibliographies, supplemented by others relevant to your topic). Based on topics chosen, students will be paired with a research partner for discussion of research and first drafts with each other.

**Week VI.** Monday, February 15, and Wednesday February 17. 
The debate over national citizenship: from Dred Scott through the Civil War and the first Civil Rights Act.

Readings: 

Decision of Attorney-General Bates, November 29, 1862, on the question of the citizenship of the commander of the schooner Elizabeth and Margaret. [Available on the web at Making of America site, Library of Congress]

Letter (in French) to the editor of the New Orleans Tribune by Edouard Tinchant, July, 1864 [original and translation available on Ctools.]


“An Act to Protect All Persons in the United States in their Civil Rights, and Furnish the Means of their Vindication” 14 Statutes at Large 27 (1866)

Week VII. Monday, February 22. Mid-term exam.


Readings:


The Thirteenth, Fourteenth, and Fifteenth Amendments to the United States Constitution

Bill of Rights and Article XIII of the 1868 Louisiana Constitution

February 26- March 7. Winter Recess

Week VIII. Monday, March 8 and Wednesday, March 10.


Readings:

Civil Rights Act of 1870 (16 Stat 140 [1870])

U.S. v. Cruikshank 92 US 542 (1875) [selections to be assigned by Panel 1]

Charles Lane, *The Day Freedom Died* [pages to be assigned by Panel 1]

**Wednesday, March 10: Presentation of U.S. v. Cruikshank 92 US 542 (1875) [Panel 1]**

**Week IX.** Monday, March 15 and Wednesday, March 17. Public accommodations and claims-making under state and federal laws.

*Readings:*


Civil Rights Act of 1875

Hall v. Decuir 95 US 485 (1878) [Pages from full file to be assigned by Panel 2]


**Wednesday: Presentation of Hall v. Decuir 95 US 485 (1878) [Panel 2]**

**Week X.** Monday, March 22 and Wednesday, March 24. The retreat from federal protection. What is left of the 14th Amendment at the end of the day?

*Readings:*


Civil Rights Cases 109 US 3 (1883) [pages to be assigned by Panel 3]

Yick Wo v. Hopkins 118 US 356 (1886)

Louisville, N.O. & Texas R. Co. V. Mississippi 133 US 587 (1890)

**Wednesday, March 24: Presentation of Civil Rights Cases 109 US 3 (1883) [Panel 3]**

Assignment for Friday, March 26: Prepare a three-page prospectus (two pages of prose plus one page of annotated bibliography) for your research paper. The prospectus should indicate the working title, the key questions that you expect to be able to answer (avoid over-general or rhetorical questions), and careful annotations of
at least two primary sources and three secondary sources already located and consulted, as well as an indication of additional sources located, and how you expect to use them.

The prospectus is a graded assignment, to be submitted to the instructor [mailbox in 1029 Haven Hall or mailbox on the 9th floor, Legal Research Building] and to your research partner. When the graded copy is returned to you with instructor comments, please be sure to review and retain it; you will be re-submitting this copy with instructor comments along with your final paper.

**Week XI. March 29 and March 31.**

The attack on suffrage and on public rights.

*Readings:*

The Separate Car Act, Louisiana, 1890.

Selections from the Louisiana Constitutional Convention of 1898.

Plessy v. Ferguson 163 US 537 (1896). Decision, dissent, brief by Albion Tourgée and other texts are excerpted in Brook Thomas, *Plessy v. Ferguson: A Brief History with Documents.* [pages from this and from the full file of the case to be assigned by Panel 4]

**Wednesday, March 31: Presentation of Plessy v. Ferguson 163 US 537 (1896) [Panel 4]**

**Week XII.** Monday, April 5, and Wednesday, April 7. 1898 and its aftermath: Inclusion, exclusion, and expansion.

*Readings:*

Gonzales v. Williams. 192 US 3 (1904). Pages from decision and from full records to be determined by Panel 5.

Letters by Isabella Gonzalez to the *New York Times* (on Ctools site).

Rebecca Scott, *Degrees of Freedom: Louisiana and Cuba after Slavery*, chap. 6.


**Wednesday, April 7. Presentation of Gonzales v. Williams. [Panel 5]**
**Week XIII.** April 12 and April 14. Confirming constitutional disfranchising initiatives in the states.

*Readings:*

Reread: Fifteenth Amendment to the United States Constitution

Alabama State Constitution. Selections.

Giles v. Harris, 189 U.S. 475 (1903) and Giles v. Teasley [selections on CTools]


**Week XIV.** April 19 and 21. “Alienage” and the twentieth century struggle over the boundaries and meaning of citizenship. The slow expansion and recuperation of suffrage rights. Public rights and “social equality.”

*Readings:*

Guinn v. United States (1915).

The Nineteenth Amendment to the Constitution (ratified 1920).


**Assignment:** Final research papers are due Friday April 23. Be sure to attach your prospectus (with instructor comments) to the final paper. [This course will not have a final exam.]