

27 January 2018

Winter Term 2018

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

**Law 877: 001. Prof. Rebecca J. Scott**

236 Hutchins Hall, Thursdays, 4:10-6:10

2 credit hours

Office Hours: 3:30PM - 5 PM, Tuesdays. 969 Legal Research Bldg. (rjscott@umich.edu)

In this seminar we 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, both 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 or custom provided any means by which to exit the status of slave and find formal freedom. In a session near the end of the semester, we will discuss the use of the concept of contemporary labor conditions “analogous to slavery,” 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).

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. We will have two special sessions oriented toward legal-historical techniques of primary-source analysis: the first a visit to the manuscript holdings of the William L. Clements Library on February 8; and the second a panel presentation by guest scholars Andrew Walker and Priya Khangura on March 8.

Each student will submit one short paper on January 18 (4 pages), and a brief outline of his/her presentation (2 pages) on the Wednesday of the week of his/her panel. A research prospectus (4 pgs) introducing the sources and questions for the final paper is due on Friday, March 16. The paper itself is due on April 20. The final paper should encompass a close analysis of a specific body of primary documents (witness testimony, depositions, inspection reports, correspondence, etc.), centered on an individual case or problem, either chosen independently or drawn from sets suggested by the instructor. It should be approximately 16 pages of text (ca 4,000 words

including notes), and should incorporate another 4 pages of transcribed primary material, for a total of 20 pages.

This course meets the Upper-Level Writing Requirement for all students, except for 2017 Fall Starters choosing it as an elective. It also meets the International or Comparative Law Distribution Requirement.

### *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 9]

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 prepared handouts, 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 the different forms of law that governed 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%].
- 4-page short writing assignment, due on Week 2 [5%].
- 4-page prospectus for the final assignment [5%]
- Presentation in the panel discussion on selected cases (including 1-pg handout) [20%].
- Final paper/ document analysis [30%].

## *Readings*

Copies of the following books have been ordered in specific paperback editions at the local bookstores. They are also on reserve in the Law Library Reserve Room. Please be sure to read from the correct edition.

Solomon Northup, *Twelve Years a Slave* (paperback edition **from LSU Press**)

Trevor Getz and Liz Clarke, *Abina and the Important Men* (Oxford University Press). **Second Edition.**

If you have not studied nineteenth-century U.S. history, encompassing the history of slavery, you may find it useful to acquire a copy of the following book as well:

Ira Berlin, *Generations of Captivity* (Harvard University Press, ppbk).

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. Thursday, January 11.**

Introduction to Course Procedures. Preliminary Discussion: Examining slavery and freedom in historical perspective. The problem of the many “legalities” of slavery: formal codes, implied reciprocities, patterns of enforcement or impunity, customary rules, and vernacular understandings.

#### *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?

### **Week 2. Thursday, January 18.**

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

*Readings:*

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]

South Carolina, 1740 “Bill for the better ordering and governing of Negroes and other Slaves in this Province.”

The *Code Noir*. Translated excerpts in Dubois and Garrigus, *Slave Revolution in the Caribbean, 1789-1804*, pp. 49–54.

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

Optional:

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

*Writing assignment #1 (4 pages, due in class on January 18).* 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, territories, or states (medieval Spain, the French Antilles, South Carolina, 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. Thursday, January 25.**

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

*Required readings:*

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.

Somerset v. Stewart. Excerpts.

Anti-slavery petition from the Germantown Quakers (1688). Transcript

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

#### **Week 4. Thursday, February 1**

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 Thursday, February 1, 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. Thursday, February 8**

Building a legal/historical analysis from fragmentary primary sources: Session I.

Note special location: William L. Clements Library (909 South University Avenue, diagonally across South University from the Law Quadrangle. Please enter through the back door, which faces Harlan Hatcher Library).

We will work with the curators of manuscripts, printed works, and graphical materials at the Clements Library to view and read selected items dealing with law and slavery. This visit provides an opportunity for students to explore different modes of engaging primary sources, in preparation for the final writing assignment, which itself requires careful transcription, annotation, and analysis of primary material.

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

As you read Northup's account, please make a note of each point at which he engages law or some form of administrative process. Choose one such episode, and post your observations on it to the Canvas discussion board. In the final portion of our session at the Clements Library, we will reflect on how one might seek our evidence that illuminates such episodes further.

### **Week 6. Thursday, February 15**

The international trade in African captives, after its "abolition" in certain jurisdictions: 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.

Packet of 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* (to be compiled by members of Panel 1.)

*Presentation of the Antelope case by Panel #1.*

### **Week 7. Thursday, February 22**

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 9-37, and others to be selected by members of Panel 2.

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

*Presentation of Death of an Overseer by Panel #2.*

[Spring break]

### **Week 8. Thursday, March 8**

Building a legal-historical analysis from fragmentary primary sources. Session II.  
Guest panel of scholars:

### **Ambiguities of status and legality in the world of slavery**

Andrew Walker (UM History PhD candidate)

“The Flight of the *Firefly*: Navigating Antislavery in the Haitian Admiralty Court (1817)”

Priya Khangura (JD, Duke University, 2017; Currently clerk for Federal Judge Roy B. Dalton, Jr., in the Middle District of Florida.)

“A Law Bound Conspiracy: How Forty-Five Men, Women, and Children Were Sailed into Slavery Aboard the Brig *Mary Ann* (1818).”

Reading: Please read both papers, and come prepared with questions for the presenters.

At the March 8 special session, coffee and cookies will be served. Feel to invite interested colleagues to join us.

### **Week 9. Thursday, March 15.**

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

*Required readings:*

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

Packet of primary and further secondary readings on Prigg, as assigned by Panel #3.

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

Second graded writing assignment, **due by 5 P.M. on Friday, March 16**, to the instructor’s mailbox on the 9<sup>th</sup> floor of the Legal Research Building (with backup file to the Assignment tab in Canvas): Prepare a 1,000-word (4 pages, *double-spaced, full margins*) prospectus for your document analysis, accompanied by a 1 page of a sample document, transcribed. The prospectus, which can incorporate material that will eventually become part of your paper, should lay out your key questions, and suggest the ways in which the materials you have selected will enable you to address those questions.

### **Week 10. Thursday, March 22.**

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.

Packet of materials on *Eulalie v. Long & Mabry* (1856), including selections from the decision and case records, as chosen by Panel #4. [Decision is on the Canvas site; a transcription of the manuscript Louisiana Supreme Court case file is available from the instructor for the use of panel members.]

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

### **Week 11. Thursday, March 29.**

The achievement of legal freedom in the United States, the recognition of new rights. The explicit project of “white supremacy” and the narrowing of those rights.

The Civil Rights Act of 1866.

James Hogue, *Uncivil War: Five New Orleans Street Battles and the Rise and Fall of Radical Reconstruction*, 91-115; and primary document, an excerpt from *Carpet-Bag Misrule* (published in 1938 by the Louisiana State Museum), pp. 29, 39-56.

The Civil Rights Act of 1875 (largely overturned in the 1883 Civil Rights Cases).

Excerpt from the Civil Rights Cases 109 U.S. 3 (1883).

### **Week 12. Thursday, April 4.**

Designating contemporary labor conditions as “analogous to slavery”: Alternative strategies and critiques.

*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].

Rebecca J. Scott, Leonardo Barbosa, Carlos Henrique Borlido Haddad, “How does the law put a historical analogy to work?: Discerning ‘a condition analogous to that of a slave’ in contemporary Brazil,” *Duke Journal of Constitutional Law and Public Policy* (2017).

### **Week 13. Thursday, April 12.**

Last session: Presentations of students' research findings, open questions. The challenge of discerning a narrative arc within the sources.

### **Final Papers**

*Guidelines for the final papers, which are due by noon on April 20.*

Each paper will provide a short, annotated transcription from the primary source, accompanied by a legal-historical analysis of the selected body of primary materials, and a reflection on the analytic questions that it addresses. Your conclusion may suggest specific questions and sources that might enable the analysis to go further. The paper should be approximately 16 pages in length (4,000 words), with approximately 4 pages of transcribed primary materials, for a total of 5,000 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.)

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.

Edit and proofread carefully. Submit a **paper copy** to Prof. Scott's mailbox, 9<sup>th</sup> floor, Legal Research, and then post a backup copy (in MSWord, Wordperfect, or pdf) on the Assignment section of Canvas. Papers will be evaluated on the clarity of the argument, the precision of the document analysis, the use of evidence to support the writer's assertions, and the linking of the analysis to the broad themes discussed in the course.