

Constitutional Law: African-American Legal History to 1954

Political Science 251, African-American Studies 251

Fall Semester 2007

Professor Lyles

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T, TH, 11:00 - 12:15, 140 BSB

Office hours: by appointment

1118 BSB, Phone: 6-3105

Email: LYLES@UIC.EDU

INTRODUCTION

This is a class in constitutional law—no more and no less than the other traditional constitutional law courses I teach at the undergraduate level; i.e., PolS 353, PolS 354, and PolS 356.

Nineteenth century Russian novelist Fyodor Dostoyevsky wrote, “the degree of civilization in a society can be observed by entering its prisons.” So too, is the relationship between the African-American political-legal experience, and the realities of freedom, equality, civil liberties and democracy in the United States. There is no better frame of reference, no straighter line of inquiry, and no more revealing lens through which to examine constitutional law, the interaction of law and politics, and the guarantees of freedom and equality in the United States than through analysis of the African-American political-legal experience. In short, this unique African-American legal experience has shaped, and continues to define, the “degree of civilization” in the United States. In fact, as others have stated, “no issue has dominated American constitutional law as much the question of race....”

The African-American political-legal experience tells us who we are as a nation, and illuminates the limits and capacities of our political institutions and processes; especially the policymaking role and function of the United States Supreme Court. Under such circumstances, this course has two principal goals. On the one hand, the African-American experience vividly demonstrates the inextricable interactions of law and politics in the United States’ governing system. At the same time, this experience also reveals and explores the continuing quest of African-Americans to define and achieve full citizenship in the United States. In fact, appreciation and analysis of this quest is requisite to understanding American “citizenship” generally in the United States.

The intersection and interdependence of these goals cannot be understated. Cogent analysis of the African-American quest for citizenship, freedom and equality under the law is required for all of us to understand who we are. In a legally oriented nation, our ethnicity, our gender, our status with regard to wealth and education, acknowledgement of our disabilities, our sexual orientation, etc., is conditioned and defined in part by the African-American experience. Full participation for all in American politics and society, therefore, has been, and continues to be defined in large measure by the successes and failures of the African-American experience.

This class provides a survey analysis of the African-American political-legal experience through the lens of significant decisions of the U.S. Supreme Court. History shows these are pivotal decisions that have forged new tests and doctrines that reflect or portend major shifts and changes in law as it relates to the African-American quest for freedom, equality and full citizenship. Significant decisions are defined as not only those cases that suggest new doctrines, major shifts or new directions in the law; but additionally these are cases that contribute to a deeper understanding of the enduring hardship of the African-American quest for freedom and equality in both historic and systemic perspective. The richness and broad range of cases includes, for example, landmark decisions involving slavery, Jim Crow segregation, access to housing and public accommodations, interracial marriage and miscegenation, school segregation, voting rights, assembly and speech, interstate and intrastate travel, protest politics, the death penalty and other rights of persons accused of crimes, affirmative action, etc.

The central thrust of such cases, however, cannot be fully grasped unless viewed in broader political-social context, and that is one of the major objectives of this class. A political-social context influences, and is in turn influenced by, actions and policies that emanate a myriad of interests; including elective political institutions (e.g., the president, Congress, governors, mayors, etc.), and from non-elective entities, including administrative agencies, federal and state courts, public opinion, and interests groups.

BRIEF COURSE DESCRIPTION

Political Science 251 [same as African-American Studies 251] provides a survey of the African-American constitutional experience from the 1600s until the landmark *Brown* decision in 1954 striking down state sponsored racial segregation and *de jure* discrimination..

The class is organized by historical periods and/or eras of the Supreme Court defined in part by the leadership and tenure of the Chief Justice. Though many leading constitutional law casebooks utilize a categorical or doctrinal approach, this class is organized chronologically. A chronological approach enhances the use of political-social context analysis and allows the student to see more clearly the patterns and rate of change, the enduring permanence, the ironies, the dualities, the contradictions and continuities in the laws that have shaped—and have been shaped by—the African-American enduring quest for freedom and equality over several centuries.

My goal is to provide a multidisciplinary examination of the African-American experience through the lens of significant Supreme Court decisions. In addition to providing students with an in-depth survey of the African-American experience, this course also explores the inextricable interactions of law and politics in the United States' governing system. In addition to analyzing the African-American quest for full citizenship, students will also learn about the United States federal courts as political institutions; e.g., their history, operation and function in the political system. For example, the broad range of cases surveyed includes landmark decisions involving slavery, Jim Crow segregation, access to housing and public accommodations, interracial marriage and miscegenation, school segregation, voting rights, interstate and intrastate travel, etc. The central thrust of such cases, however, cannot be fully grasped unless viewed in broader political-social context, and that is one of the major objectives of this class. A political-social context influences, and is in turn influenced by, actions and policies that emanate a myriad of interests; including elective political institutions (e.g., the president, Congress, governors, mayors, etc.), and from non-elective entities, including administrative agencies, federal and state courts, public opinion, and interests groups.

The primary objective of this class is to stimulate thought and analysis among students regarding the important interrelationships between U.S. constitutional law and politics and how these relationships have shaped, and continue to shape the African-American experience.

COURSE FORMAT

The class will be conducted in a formal seminar format utilizing the Socratic method. This format lends itself to continuous active engagement and dialogue between the professor and students and among students themselves. Accordingly, students are required to attend and participate in class. Meaningful participation, however, requires that students must come to class prepared. Should this occur the class can prove interesting, challenging, and an exciting learning experience. A word of caution: it is important that students prepare for each class since material is cumulative and the workload increases dramatically as the semester proceeds. Attendance in class and participation in discussion seminars is both mandatory and essential.

The seminar format will combine some early presentations by the professor, brief reports on particular items by students and general discussion by everyone, in most instances led by designated discussion leaders.

COURSE REQUIREMENTS

All students must utilize the UIC Blackboard system. You can enter UIC Blackboard from the UIC homepage, go to “learning at UIC,” or, go directly to <http://blackboard.uic.edu/>.

The tape recording of any part of my class (or the use of any other electronic recording device) is strictly prohibited. Students with disabilities who require accommodations for access and participation in this course must be registered with the Office of Disability Services (ODS). Please contact ODS at 312/413-2103 (voice) or 312/413-0123 (TTY). If you have a documented disability and wish to discuss academic accommodations (including electronic recording), please contact me immediately.

Students should be familiar with UIC’s policies regarding academic integrity. These guidelines can be found at the following URL: www.uic.edu/depts/sja/integrit.htm

A. Readings/Case Law.

Readings under the various topic areas are only suggestive of the vast and growing literature and case law available. All assigned cases must be read prior to the class session for which they are assigned. **Be prepared to review and discuss all assigned cases and readings in class.**

Required Texts:

Kevin Lyles, *African-American Legal History: Cases and Commentaries [AALH]* (UIC Blackboard). Additional *required* readings will be posted on Blackboard.

Book reviews selections (you must select one from the following list).

The book review selections are NOT available in the UIC bookstore.
Students are required to secure a copy on their own.

Richard Kluger. *Simple Justice: The History of Brown v Board of Education and Black America's Struggle for Equality.*

Lerone Bennett. *Forced into Glory: Abraham Lincoln's White Dream.*

Ina Corinne Brown. *The Story of the American Negro* (1936).

Robert M. Goldman. *Reconstruction and Black Suffrage: Losing the Vote in Reese and Cruikshank The Negro in Virginia* (compiled by Workers of the Writer's Program of the Work Projects Administration of the State of Virginia)

Charles Lofgren. *The Plessey Case: A Legal-Historical Interpretation.*

Don Fehrenbacher. *The Dred Scott Case: Its Significance in American Law and Politics*

Leslie Howard Owens. *This Species of Property: Slave Life and Culture in the Old South.*

Winthrop D. Jordan. *White Over Black: American Attitudes Toward the Negro 1550-1812.*

David Delaney. *Race, Place, & the Law.*

Ian Lopez. *White by Law: The Legal Construction of Race.*

Vose. *For Caucasians Only*

Optional Texts (These books may NOT be used for your book review):

Charles Johnson, Patricia Smith, et al. *Africans in America: America's Journey through Slavery*

Thomas Morris. *Southern Slavery and the Law: 1619-1860.*

Hugh Thomas. *The Slave Trade: The Story of the Atlantic Slave Trade, 1440-1870.*

A. Leon Higginbotham. *In the Matter of Color: Race and the American Legal Process, The Colonial Period.*

Mark Tushnet. *The American Law of Slavery: 1810-1860.*

Lerone Bennett. *Before the Mayflower: A History of the Negro in America 1619-1962.*

Edward Raymond Turner. *The Negro in Pennsylvania: Slavery, Servitude, Freedom: 1639-1861.*

Earl Maltz. *Civil Rights, the Constitution, and Congress, 1863-1869.*

James Allen, et al. *Without Sanctuary: Lynching Photography in America*

Kevin Lyles, *The Gatekeepers: Federal District Courts in the Political Process* (see required texts for PolS 354 in UIC bookstore)

Lawrence Baum, *The Supreme Court.*

“Understanding the Federal Courts” <http://www.uscourts.gov/UFC99.pdf>

B. Assignments.

Throughout the semester, there may be several short out-of-class research assignments, case briefs, and frequent review quizzes (both in-class and take-home). These will be discussed later.

Computation of Course Grade:

Midterm Exam	35%
Final Exam	35%
Book review	15%
Attendance, quizzes, critiques, participation and briefs.	15%

SEMINAR SCHEDULE

DATE HEADINGS ARE MERELY SUGGESTIVE OF WHEN DISCUSSION MAY **BEGIN** FOR EACH TOPIC AREA AND ARE SUBJECT TO CHANGE

The case opinions are presented in chronological order to provide a sense of how the law developed and cover several broad categories; including, freedom of association, affirmative action and employment discrimination, public accommodations/travel/housing, crime and the rights of the accused, education, and campaigns, voting, and elections. Students are required to prepare a written brief for each required case. **Students may be required to turn in written briefs on the due dates on a RANDOM basis.**

Syllabus Key:

Readings preceded by an asterisk () are highly recommended but are **not required**.

[blackboard] this material is available to you via “UIC Blackboard”

From time to time you will be required to locate cases on your own online [Lexis/Nexis]. I highly recommend Lexis/Nexis, available in the UIC library (you can also access [Lexis/Nexis](#) from home/dorm using your UIC net-id). Other possibilities include:

<http://www.supremecourtus.gov/>

<http://www.uscplus.com/>

<http://www.findlaw.com/>

<http://supct.law.cornell.edu/supct/index.php>

Note: if you have already taken an undergraduate constitutional law class **with me** [i.e., PolS 252, 353, 354, 356, or 564], then your attendance on **September 4, 6, and 11 is optional**. I will cover the structure of

the federal courts, types of writs, how to brief a case, judicial review, statutory interpretation, “mechanical” vs. “behavioral jurisprudence,” internal and external limits on the Court, various legal definitions, *Marbury v Madison*, etc. My lecture is similar for each of these classes for the first few class periods. Be warned however, this material will be included on the exams. You will not be marked absent on these days if you send an email to me indicating that you have completed one of the above named classes *with me* prior to taking PoS 354.

WEEK ONE

Tuesday August 28

Review of course requirements and introductory materials.
PoS 251/AAS 251 course syllabus for Fall 2006 [[Blackboard](#)]
Law related UIC courses taught by Lyles [[Blackboard](#)]
Book Review Handout [[Blackboard](#)]

Thursday August 30

No Class: American Political Science Association Meetings

Melone, "Why and How to Brief a Case." [[Blackboard](#)]
O'Brien "The How, Why, and What to Briefing and Citing Court Cases" [[Blackboard](#)]
LYLES (AALH), chapter one

WEEK TWO

Tuesday September 4

Introduction to Courts and Law (lecture)
LYLES (AALH), chapter one

Thursday September 6

Introduction to Courts and Law (lecture), continued.
LYLES (AALH), chapter one

WEEK THREE

Tuesday September 11

Introduction to Courts and Law (lecture), continued.
*Preface, *AALH* (LYLES) [[Blackboard](#)]
LYLES (AALH), chapter one, pp. 1-16 [[blackboard](#)]
African Slavery: An Overview

Thursday September 13

LYLES (AALH), chapter one, pp. 16-33 [[blackboard](#)]
African Slaves and Free Blacks in Colonial America: An Overview
Case Studies: Virginia
In Re Tuchinge
Re Davis
Re Sweatt
In re John Punch
Re Emmanuel
Sexual Exploitation and Intermarriage in Colonial Virginia
In Re Warwick
John Locke (1632-1704)
The Royal African Company

WEEK FOUR

Tuesday September 18

LYLES (AALH), chapter one, pp. 33-70 [blackboard]

Higginbotham's "precepts"

Case Studies: South Carolina

1712 and 1740 Slave Codes

Jefferson's Note on the State of Virginia

African-Americans and the Revolutionary War

Slavery, African-Americans, the Declaration of Independence, the Articles of Confederation and the United States Constitution; especially constitutional provisions protecting slavery (pp. 54-58)

Thursday September 20

Summary, "The International Slave Trade" by Philip Foner, in *Civil Rights Since 1787: A Reader on the Black Struggle*, edited by Jonathon Birnbaum and Clarence Taylor, Chapter 2, pp. 9-15.

[blackboard]

WEEK FIVE

Tuesday September 25

**Unchained Memories: Slave Narratives* (in class presentation)

LYLES (AALH), chapter two, pp. 1-48 [blackboard]

Fugitive Slave Act 1793

Judicial Review

Marbury v. Madison (1803)

The Missouri Compromise

The Antelope (1825)

Gag Resolution

Groves v. Slaughter (1841)

United States v. the Amistad (1841)

Thursday September 27

***Amistad* (in class)**

"George Washington on Practical Slavery," pp. 1-9. [blackboard]. Prepare a 1-2 page typed critique on these excerpts from Washington's writings. Your critique is due at the start of class today. You will earn 1-2 points added to your midterm grade.

WEEK SIX

Tuesday October 2

***Amistad* (in class)**

LYLES (AALH), chapter two, pp. 48-94 [blackboard], continued

Winthrop Jordan, *White over Black*, "Fruits of Passion," Chapter IV, pp. 136-178. [blackboard]. Prepare a 1-2 page typed critique on Jordan's chapter 2. Your critique is due at the start of class today. You will earn 1-2 points added to your midterm grade.

Excerpt from *Democracy in America* (Alexis de Tocqueville). "In the United States people abolish slavery for the sake not of the Negroes but of the white men." [blackboard].

Thursday October 4

LYLES (AALH), chapter two, pp. 48-94 [blackboard], continued

Prigg v. the Commonwealth of Pennsylvania (1842) *Submit written (typed) brief today. (1 point on midterm)*

The Necessity of Bondage, 1845, John C. Calhoun

The Fugitive Slave Act of 1850

“Free Blacks and the Fugitive Slave Act” by Martin Delany, in *Civil Rights Since 1787: A Reader on the Black Struggle*, edited by Jonathon Birnbaum and Clarence Taylor, Chapter 17, pp. 66-69.

[blackboard]

Souther v. Commonwealth of Virginia (1851), and,

Definition of “cobbed” to better understand the facts in *Souther v. Commonwealth of Virginia* (1851)

[blackboard]. As explained by Solomon Northrup.

Kansas Nebraska Act, 1854

Dred Scott v. Sanford (1857)

Ableman v. Booth (1859)

“What to the Slave is the Fourth of July?” by Frederick Douglass, in *Civil Rights Since 1787: A Reader on the Black Struggle*, edited by Jonathon Birnbaum and Clarence Taylor, Chapter 19, pp. 74-77.

[blackboard]

Connolly's View of Dred Scott [blackboard]

“Illinois No Longer a Free State.” *Chicago Tribune*, in *Civil Rights Since 1787: A Reader on the Black Struggle*, edited by Jonathon Birnbaum and Clarence Taylor, Chapter 21, pp. 83-84.

[blackboard]

WEEK SEVEN

Tuesday October 9

LYLES (AALH), chapter three, pp. 1-97 [blackboard]

The American Civil War

The Age of Segregation and Constitutionalizing Racism

District of Columbia Emancipation Act (1862)

Lincoln and the Emancipation Proclamation

Lerone Bennett and The Emancipation Proclamation

The Freedman’s Bureau Act of 1865

The Emancipation Proclamation [blackboard]

“Who Freed the Slaves,” Ira Berlin in *Civil Rights Since 1787: A Reader on the Black Struggle*, edited by Jonathon Birnbaum and Clarence Taylor, Chapter 23, pp. 90-97. [blackboard]

*Forty Acres and a Mule: Special Field Order No. 15, as reprinted in *Civil Rights Since 1787: A Reader on the Black Struggle*, edited by Jonathon Birnbaum and Clarence Taylor, Chapter 283, pp. 118-120.

[blackboard]

Thursday October 11

LYLES (AALH), chapter three, pp. 1-97 [blackboard], continued

The Mississippi Black Codes (1865)

An Act to Protect All Persons in the United States in Their Civil Rights, and Furnish Means of Their Vindication [The Civil Rights Act of 1866]

The Reconstruction Amendments

The Ku Klux Klan Act (1871)

Slaughterhouse Cases (1873)

The Civil Rights Act of 1875

United States v. Reese (1876)

United States v. Cruikshank (1875)

The Compromise of 1877

Hall v. DeCuir (1878)

**Strauder v. West Virginia* (1880)

Pace v. Alabama (1883)

WEEK EIGHT*Tuesday October 16***LYLES (AALH), chapter three, pp. 1-97** [blackboard], continued*United States v. Harris* (1883)*The Civil Rights Cases* (1883)*Yick Wo v. Hopkins* (1886)*Plessy v. Ferguson* (1896)*Our Pro-Slavery Constitution* by William Lloyd Garrison, in *Civil Rights Since 1787: A Reader on the Black Struggle*, edited by Jonathon Birnbaum and Clarence Taylor, Chapter 4, pp. 24-28.

[blackboard]

Newspapers on Plessy v. Ferguson, as reprinted in Civil Rights Since 1787: A Reader on the Black Struggle, edited by Jonathon Birnbaum and Clarence Taylor, Chapter 40, pp. 170-171. [blackboard]*Thursday October 18***MIDTERM EXAMINATION****WEEK NINE***Tuesday October 23*

Extra Credit. Secure a copy of the book Without Sanctuary: Lynching Photography in America. Read the introductory essay (pages 7-44). View the photographs on pages 46-164 and read the corresponding captions and endnotes on pp. 165-205. Write a critical review essay of the entire work. Your essay, at a minimum, should (1) summarize the entire work and explain its relevance to our focus on the African-American constitutional experience in PoS 251 (AASt 251), and, (2) summarize your own views of the work as a significant contribution to understanding the African-American legal experience; i.e., there is no right or wrong answer to question 2. I am interested in your own personal views and reactions to this book. Your completed essay is due on, or before, the day of the final exam. Your essay may be no longer than 10 typewritten double-spaced pages and will earn from 0-10 points added to your final exam score.

Cumming v. Board of Education, 175 U.S. 528 (1899) [blackboard]Argument for the Defendant in *Berea College v. Kentucky* [blackboard]*Berea College v. Kentucky*, 211 U.S. 45 (1908) [blackboard]*Guinn v. United States*, 238 U.S. 347 (1915) [blackboard]*Buchanan v. Warley* (1917) [blackboard]The Race War in the North, [The Springfield Illinois Race Riots], by William English Walling, in *Civil Rights Since 1787: A Reader on the Black Struggle*, edited by Jonathon Birnbaum and Clarence Taylor, Chapter 44, pp. 184-189. [blackboard]The Chicago Riot, 1919, *The Chicago Defender* [blackboard]**The Tulsa Race Riots* [blackboard]Discussion of *United States v. Carolene Products* (1923) in Davis and Graham, *The Supreme Court, Race and Civil Rights*, pp. 75-77 [blackboard] Also review Lyles, *AALH* (chapter 2, pp. 9-10, including endnotes)*Thursday October 25**The Lynching of Claude Neal* (NAACP, Nov. 30, 1934) [blackboard]*Who Invented White People?* [blackboard] Save for PoS 252/AASt 252*Nixon v. Herndon* (1927) [blackboard]*Gong Lum v. Rice* (1927) [blackboard]*Powell v. Alabama* (1932) *The Scottsboro Cases* [blackboard]*Norris v. Alabama* (1935) *The Scottsboro Cases***PBS Video, American Experience, *The Scottsboro Cases: An American Tragedy***

WEEK TEN*Tuesday October 30*

Cont. PBS Video, American Experience, The Scottsboro Cases: An American Tragedy
Grovey v. Townsend (1935) [blackboard]

Thursday November 1

Missouri ex rel. Gaines v. Canada, 305 U.S. 337 (1938) [blackboard]
Mitchell v. United States (1941) [blackboard]
Smith v. Allwright, 321 U.S. 649 (1944) [blackboard]
 **Korematsu v. United States*, 323 U.S. 214 (1944) [blackboard], take PolS 353

WEEK ELEVEN*Tuesday November 6*

Judicial Standards of Equal Protection [blackboard]
 **Lynn v. Downer* (1944) [blackboard]
 **Screws v. United States* (1945) [blackboard]
Morgan v. Commonwealth of Virginia (1946) [blackboard]
 **Colegrove v. Green* (1946) [blackboard]
 **Louisiana ex rel. Francis v. Resweber* (1947) [blackboard] (See PolS 354)

Thursday November 8

The Ku Klux Klan: A Secret History

Thurgood Marshall's petition in Briggs v Elliott. Turn in a 1-2 page typed critique of this .pdf document (including the photographs) today. Your critique will earn 1-2 points added to your final exam. [blackboard]

WEEK TWELVE*Tuesday November 13*

Sipuel v. Board of Regents of the University of Oklahoma (1948) [blackboard]
Shelley v. Kraemer (1948) [blackboard]
Sweatt v. Painter (1950) [blackboard]
Henderson v. United States (1950) [Lexis/Nexis]
McLaurin v. Oklahoma State Regents (1950) [blackboard]
Briggs v. Elliott (1951) [Lexis/Nexis]
 **Beauharnais v. Illinois* (1952) [blackboard] (Take PolS 354 with Lyles)
 Kovel: *White Racism: A Psychohistory*, ch. 4 "The Fantasies of Race" [blackboard]. Turn in a typed 1-3 page critique by Thursday Nov. 16th. You will earn 1-3 points added to your final exam grade.
Government's Brief in Brown, a selection from 49 Landmark Briefs and Arguments of the Supreme Court of the United States: Constitutional Law 116-123 (P. Kurland and G. Caspar eds. 1975). (Fisher) [blackboard].

Thursday November 15

Five Questions of the Brown Litigation [blackboard]
 Court orders reargument. See 345 U.S. 972 [Lexis/Nexis]
 Summary of Argument presented to the Supreme Court of the United States, 1953: NAACP Legal Defense and Education Fund. Thomas R. Frazier, ed., Afro-American History, Wadsworth Publishing Company, Belmont, CA, 1988, pp. 319-323. [blackboard]
Brown v. Board of Education I and II, 1954 & 1955 [blackboard] or [Lexis/Nexis]
Bolling v. Sharpe, 347 U.S. 497 (1954) [blackboard]
 Southern Manifesto [blackboard]

WEEK THIRTEEN*Tuesday November 20*

Brown v. Board of Education I and II, 1954 & 1955 [blackboard]
Review Exam #1 in class

Thursday November 22
(No Class: Thanksgiving Holiday)

WEEK FOURTEEN

Tuesday November 27

Film: *Simple Justice*, in class quiz today. Your typed brief for Brown v Board (I and II) is due at the start of class today. There are no extensions for any reason. This assignment constitutes 15% of our final exam.

Thursday November 29

Film: *Simple Justice*, in class quiz today

Book reviews are due at the start of class today 11/29/07. There are no extensions for any reason.

WEEK FIFTEEN

Tuesday December 4

“Slavery the Constitution and the Founding Fathers” by Mary Frances Berry in *Civil Rights Since 1787: A Reader on the Black Struggle*, edited by Jonathon Birnbaum and Clarence Taylor, Chapter 3, pp. 16-23. [blackboard]

Judicial Standards of Equal Protection [blackboard]

Thursday December 6

Conclusion and review for final examination

A brief look at PolS 252/AAS 252

Exploring Constitutional Conflicts: Levels of Scrutiny under the Equal Protection Clause.

<http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/epscrutiny.htm>

“Bank of America Insists Can’t Find Slave Profits in the Past,” Chicago Sun-Times, 4/30/05, p.3.

[blackboard]

Final Exam

[TBA, as scheduled by LAS during finals weeks]