

Constitutional Law: Women, Gender, Privacy and the Law

Political Science 356
African-American Studies 356
Gender and Women's Studies 356
Spring Semester 2007, Professor Lyles

Version 1/7/07

9:30 – 10:45, TR, 367 BSB
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The Anglo-American legal tradition purports to value equality, by which it means, at a minimum, equal application of the law to all persons. Nevertheless, throughout this country's history, women have been denied the most basic rights of citizenship, allowed only limited participation in the marketplace, and otherwise denied access to power, dignity, and respect. Women have instead been largely occupied with providing the personal and household services necessary to sustain family life.

...the law has furthered male dominance by explicitly excluding women from the public sphere and by refusing to regulate the domestic sphere to which they are thus confined. ... the law has legitimized sex discrimination through the articulation of an ideology that justifies differential treatment on the basis of perceived differences between men and women. Taub and Schneider, The Politics of Law

"Historically, woman suffrage and abolition had been connected.... [However] the unified National American Women's Suffrage Association turned away from universal suffrage in favor of literacy qualifications, excluded southern blacks from their organization, and argued that giving women the vote would restore white supremacy by enlarging the white voter base, making it impossible for blacks to gain a majority. Educational qualifications that would give most white women the vote would render the black women's vote too small to matter, as a consequence of their lower educational rates. In this way white supremacy could be maintained without dependence on the state constitutional changes and segregation laws then being put into place... 'Though historians usually focus on the race issue as a prime obstacle to the suffragists' success, there is considerable evidence to indicate that the race issue was, in fact, a major causative factor in the emergence in the 1890s of the woman suffrage movement in the South.' It is, indeed, one of the ironies of history that racism was part of a move toward gender equality." Darlene Clark Hine and Christie Ann Farnham, "Black Women and the Right to Vote."

BRIEF COURSE DESCRIPTION

This course provides a survey of the legal history of women in the United States and their continuing struggle for equal rights and protections under the yoke of a Constitution that rationalized both slavery and patriarchy. We will explore the extent to which women in the United States have used the federal courts to secure basic freedoms; including "freedom from inferior constitutional or juridical status," "freedom from fertility and family discrimination," and "freedom from fear." In short, we will survey the extent to which women in the United States have achieved "emancipation" through law. "Emancipation," paraphrasing Joan Hoff, means equitable treatment that is not grounded in dominant male values of any time period and that does not violate women's sense of community, commonality, and/or culture by demanding assimilation or acceptance of stereotypic "feminine" roles as the price for full participation in U.S. society and equal protection under the law.

These issues will be discussed in the overall framework of the role and participation of courts, primarily the U. S. Supreme Court, in the formulation and implementation of public policy. This discussion should allow us to consider such factors as:

A. The nature, characteristics, and dynamics of the political system and the policymaking process; e.g., system features, values and structures; participants in the policy process; the development and implementation of public policy.

B. The nature of civil liberty conflict, including how and why such conflicts begin; and the role and participation of various actors in such conflict; for example, the participation of organized groups and the roles of law enforcement, prosecutors, lawyers, and judges.

C. The role of courts in dealing with civil liberty conflict, especially the necessity and propriety of court action given the nature of issues submitted for judicial determination, and, the capacity and limitations of courts and the judicial process in dealing with such issues.

D. The relation and interrelation of courts to other governing institutions in dealing with civil liberties; e.g., the role and participation of the Congress, the President, the executive and administrative agencies, and the role and participation of state and local governments.

E. The political and social impact of court determinations; law and social change; factors affecting compliance and non-compliance; and the consequences of court actions.

How the courts have responded to issues of constitutional equality for women is the major concern in this seminar. These issues include: (1) gender discrimination, (2) women's rights, (3) privacy (as it relates to contraception and sex), (4) sexual orientation (e.g., gay and lesbian issues), (5) sexual harassment, (7) pornography, rape and other forms of violence against women, and (8) political participation (as it relates to women's suffrage, participation, and representation).

The broad categories above include a plethora of legal issues including: employment discrimination, affirmative action, gender based work classifications, women's suffrage, Title VII of the Civil Rights Act of 1964, all-male juries, male-only estate administration, gender based G.I. benefits and veteran preferences in hiring, gender based survivor benefits, military promotion, social security contributions, divorce and child support payments, social security taxes and calculations, fathers' rights and the rights of unwed fathers, marriage and alimony, the draft, education and single-sex admission policies, rape laws, miscegenation, procreation and the right of privacy; sterilization, contraception, pregnancy and pregnancy leave (for both men and women), abortion, the "oppression" of pornography, sexual orientation, homosexual sodomy, sexual harassment, poverty, etc.

Students will also be encouraged to explore the parallels and contradictions between the Supreme Court's denial or promotion of "women's rights," "white women's" rights, and, "African-American women's rights." The sexualization of "race" occurred within the context of changing legal practices [see PoS 251 and 252]. During the African slave trade, for example, the sexual exploitation of female slaves was commonplace. In fact, African women, especially young girls, were often given greater *freedom* on slave ships to make them available for the ship's male crews' sexual exploitation. "White men of every social rank slept with Negro women. The Colonists, as well as European travelers in the colonies frequently pointed to this facet of American life." In fact, for the greater part of this nation's history, the laws have encouraged the sexual exploitation of African-American women and the castration of African-American men. The Supreme Court, for example, recognized and defended—as one of the primary justifications for racial segregation and discrimination—the need to prevent black men from having sex with white women; i.e., to "preserve the purity of blood." Thus, our study of the legal evolution of women's rights in the United States must acknowledge both the similarities as well as the glaring contradictions between and among the everyday experiences of African-American women and "white" women.

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 encouraged and expected to attend and participate in class. Meaningful participation, however, requires that students must come to class prepared. Should this occur, the class will be an 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. I will randomly take attendance. Your attendance grade will be calculated based on the percentage of days you are present when attendance is taken. For example, if attendance is taken 10 times and you are present 8 of the ten times, then your attendance is 80%, which equals 12 out of 15 points. **Students are REQUIRED to “brief” every required case and bring their written briefs to class.**

COURSE REQUIREMENTS

Prerequisite(s): Grade of C or better in POLS 101 or grade of C or better in POLS 112 or grade of C or better in AAST 100 or grade of C or better in AAST 103 or grade of C or better in GWS 101; or consent of the instructor.

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

Caution: I will send many notes to you during the semester using Blackboard; these notes are automatically routed to you UIC email account.

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, 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

Required Texts:

(1) Lexis/Nexis via the UIC Library (on-line). You can also access Lexis/Nexis from home/dorm using your UIC net-id)

(2) Barker, Lyles, et. al. *Civil Liberties and the Constitution* (8th edition), if you purchase my text (Barker/Lyles), make note that we will only use about 1/3 of this book for PoIS 356 this semester, the other 2/3 is *required* for PoIS 354 (*Civil Liberties and the Constitution*) which I often teach during the Fall semester. Therefore, if you plan to take 354 with me, I suggest buying this book now.

AND/OR,

(3) Leslie Friedman Goldstein: *The Constitutional Rights of Women*. This case book is somewhat dated. However, we will use about ½ of its contents in PoLS 356. However, all of what we will use from Goldstein is either also in Barker/Lyles or on Blackboard.

AND/OR,

(4) Clare Cushman, ed, *Supreme Court Decisions and Women's Rights*. Newer book (2001) but somewhat basic.

AND/OR,

(5) Many of the cases can also be located at one of the following web sites:

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

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

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

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

Recommended:

Mariam Schneur, *Feminism: The Essential Historical Writings*

Lawrence Baum. *The Supreme Court* (8th edition)

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

You may find <http://www.feminist.org/> helpful in keeping up with current events discussed in class.

Book Review Essay Options (select one):

bell hooks. *Feminist Theory*

Kevin Lyles, *The Gatekeepers: Federal District Courts in the Political Process*

Fiscus. *The Constitutional Logic of Affirmative Action*

Linda Kerber. *No Constitutional Right to Be Ladies*

Vicki Crawford, editor. *Women and the Civil Rights Movement*

Joan Hoff. *Law, Gender and Injustice: A Legal History of Women*

Sandra F. VanBurkleo. *Belonging to the World: Women's Rights and American Constitutional Culture*

Mary Lindon Shanley. *Just Marriage*

Requirement Computation of Course Grade

Midterm Exam	40%
Final Exam	30%
Book Review Essay	15%
Attendance, Quizzes, and Participation	15%

SEMINAR SCHEDULE

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.**

Use the following key to locate class materials:

[Blackboard] the "UIC Blackboard Learning System"

[Goldstein] see Leslie Friedman Goldstein: *The Constitutional Rights of Women*

[Barker&Lyles...] see Barker, Combs, Lyles, and Perry: *Civil Liberties and the Constitution* (8th edition)

[Lyles] see *The Gatekeepers: Federal District Courts in the Political Process*

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

@Readings preceded by an ampersand "@" are **REQUIRED** (unless also preceded by an asterisk) and may be critiqued for optional credit. You may earn 0-3 points per critique. Points earned for critiques submitted *prior* to the midterm will be added to your midterm exam score. Points earned for critiques submitted after the midterm will be added to your final exam score. Critiques should include a detailed summary of the reading as well as your own analysis (agree/disagree and why?). Be creative. Critiques are limited to no more than three typed pages.

Tentative Semester Schedule

- Date headings are merely suggestive of when discussion might begin for each topic area and are subject to change (keep on track)
- Not all "required" material listed on the syllabus will be discussed in class, however said materials are "fair game" for the midterm and final examinations.
- Additional material will be added to the syllabus during the semester (like the Constitution, the syllabus can be amended).

WEEK ONE***Tuesday January 16***

Introduction.

The PoLS 356 Syllabus for Spring 2007 [Blackboard] Note: students are required to check the on-line syllabus weekly for updates.

A comparison of constitutional law courses offered at UIC by Dr. Lyles [Blackboard]

Book Review Guidelines [Blackboard]

Thursday January 18

Note: *if you have already taken an undergraduate constitutional law class with me [i.e., 251, 252, 353, 354, or 356], then your attendance on **January 18, 23, 25 and 30 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, legal definitions, etc., Marbury v. Madison and the "incorporation of the Bill of Rights." My lecture is similar for each of the above listed 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 these classes with me prior to taking PoLS 356.*

Lecture: Courts as policymaking institutions, introduction.

*Hoff. Introduction: Toward a Theory of Women's Legal History, pp. 1-20.

*Lyles, *The Gatekeepers*: ch. 1, p. 1-9.

*Barker&Lyles... pp. 3-12. (skim)

*Baum, chapters 1-3

*"Understanding the Federal Courts" <http://www.uscourts.gov/UFC99.pdf>

Melone, pp. 104-114. "Why and How to Brief a Case." [Blackboard]

O'Brien "The How, Why, and What to Briefing and Citing Court Cases" [Blackboard]
 @"Women's Subordination and the Role of Law," by Nadine Taub and Elizabeth M. Schneider in *The Politics of Law*, David Kairys, ed., (1990), reprinted in D. Kelly Weisberg, ed., *Feminist Legal Theory: Foundations* (1993), pp. 9-21. [Blackboard]

WEEK TWO

Tuesday January 23

Lecture: Courts as policymaking institutions, continued...

*Lyles. *The Gatekeepers*, ch. 2, p. 11-35.

*Baum. chapters 4-6

*Gender and Law in the American Colonies: An Overview, 1600–1776. [not available at this time]

@Leslie Bender, "A Lawyer's Primer on Feminist Theory and Tort," 38 *J. Legal Education* 3 (1988), as reprinted in D. Kelly Weisberg, ed., *Feminist Legal Theory: Foundations* (1993), pp. 58-74.

[Blackboard].

*Hoff. Chapter One: The Masculinity of U.S. Constitutionalism, pp. 21-48.

Thursday January 25

Lecture: Courts as policymaking institutions, continued...

*Hoff. Chapter Two: Women and the American Revolution, pp. 49-79.

Abigail Adams writes to her husband John Adams, asking him to "remember the ladies" in the new code of laws. Miriam Schneir, *Feminism: The Essential Historical Writing*, pp. 2-4. [Blackboard]

*@Mary Wollstonecraft, "A Vindication of the Rights of Woman," Miriam Schneir, *Feminism: The Essential Historical Writing*, pp. 5-16. [Blackboard].

1827. "Education for Black Women," by Matilda. Excerpted from *Civil Rights Since 1787*, edited by Jonathan Birnbaum and Clarence Taylor (2000), pp. 45-46. [Blackboard]

WEEK THREE

Tuesday January 30

Marbury v. Madison (1803) [Blackboard]

Incorporation of the Bill of Rights, Selective Incorporation, Fundamental Rights

The Selective Nationalization of the Bill of Rights and Other Fundamental Rights, in David M. O'Brien, Constitutional Law and Politics, vol. 2, pp. 306-315. [Blackboard]

Cases Incorporating Provisions of the Bill of Rights into the Due Process Clause of the Fourteenth Amendment [Blackboard].

**Barron v. Baltimore* (1833) [CL&C Suppl.]

**Hurtado v. California* (1884)

**Twining v. New Jersey* (1908)

**Palko v. Connecticut* (1937), CL&C, pp. 21-23

Required assignment: 3. Lexis/Nexis via the UIC Library

PART I. Unequal Rights for Women and Gender Based Discrimination

1830 "How should men treat their wives? How should wives treat their husbands?" by Mathew Carey [Blackboard]

*Barker&Lyles... pp. 707-714 (skim)

@Sarah and Angelina Grimké, 1836. Letters on the Equality of the Sexes and the Condition of Woman, in Miriam Schneir, *Feminism: The Essential Historical Writing*, pp. 35-48. [Blackboard]

*Kathleen M. Brown. Good Wives, Nasty Wenches & Anxious Patriarchs: Gender, Race, and Power in Colonial Virginia (Chapel Hill: University of North Carolina Press, 1996).

- *Hoff. Chapter Three: From British Subjects to U.S. Citizens pp. 80-116.
 Frederick Douglas, Editorial From the North Star, in Miriam Schneir, *Feminism: The Essential Historical Writing*, pp. 83-85. [Blackboard]
 Married Women's Property Act, 1848 and Married Women's Property Act 1860, in Miriam Schneir, *Feminism: The Essential Historical Writing*, pp. 72-74, 122-124 [Blackboard] (skim)
 *"Women's Rights." Sojourner Truth. Excerpted from Civil Rights Since 1787, edited by Jonathan Birnbaum and Clarence Taylor (2000), pp. 127-129. [Blackboard]
 @"The Subjection of Women" An Essay by John Stuart Mill, excerpts, in Miriam Schneir, *Feminism: The Essential Historical Writing*, pp. 162-178 [Blackboard].

Thursday February 1

Today is the first day of REQUIRED attendance for ALL students

- Brief Overview of the 13th, 14th and 15th Amendments. Excerpted from *African-American Legal History: Cases and Commentaries*, Chapter 3 (Lyles) [Blackboard]
 1873. *Slaughterhouse Cases* [Blackboard]
 Goldstein, pp. 3-8 [Blackboard]
Brief of Bradwell's Counsel, excerpt, [Goldstein] pp. 66-69, OR [Blackboard]
 1873. *Bradwell v. State of Illinois* [Goldstein] pp.70-72, OR [Barker&Lyles...], pp. 715-717 OR [Blackboard].
 Early Struggle for the Ballot
 Goldstein, pp. 73-76, OR [Blackboard]
 Feminist Jurisprudence: An Overview. http://www.law.cornell.edu/topics/feminist_jurisprudence.html
 OR [Blackboard]
 *Introduction: The Varieties of Feminist Thinking, Rosemarie Tong, in *Feminist Thought: A Comprehensive Introduction* (Boulder, CO: Westview Press, 1989).
 *Biography, Virginia Minor, see http://search.eb.com/women/articles/Minor_Virginia_Louisa.html
 *Hoff. Chapter Four: Constitutional Neglect, 1787-1872, pp. 117-150.
 1875. *Virginia Minor v. Reese Happersett* [Goldstein] pp. 76-83 OR [Blackboard].
 1876. *United States v. Reese* [Blackboard]
United States v. Cruikshank (1876) [Blackboard].
 *1883. *Civil Rights Cases* [Blackboard]
 *1892. "The Higher Education of Women" by Anna Julia Cooper. Excerpted from Civil Rights Since 1787, edited by Jonathan Birnbaum and Clarence Taylor (2000), pp. 249-251. [Blackboard]
 1896. *Plessy v Ferguson* (1896), Barker&Lyles... pp. 463-468 OR [Blackboard].

WEEK FOUR

Tuesday February 6

- Economic Substantive Due Process
 *Hoff. Chapter Five: Constitutional Discrimination, 1872-1908, pp. 151-191.
 Substantive due process handout, *The Oxford Companion to the Supreme Court*, Kermit Hall ed., pp. 237-239 [Blackboard]
 1905. *Lochner v. New York* [Goldstein], pp. 8-19 OR [Blackboard]. Also, Find this case on Lexis/Nexis (the full opinion), read and brief the case and print ONLY the first page of the case (as downloaded and/or printed from Lexis/Nexis) and turn in the "one" printed page today for one point on your first exam. Turn in ONLY the first printed page from Lexis/Nexis with your name written at the top.
 1908. *Muller v. Oregon* [Goldstein] pp. 20-22, OR [Barker&Lyles...], 717-719 or [Blackboard]
 *[Schneir] Senate Report—History of Women in Industry in the United States, pp. 254-267. (skim).
 1911 Triangle Shirtwaist Factory Fire in New York City [Blackboard]

- *1915. "Woman Suffrage and the Fifteenth Amendment" by Mary Church Terrell. Excerpted from Civil Rights Since 1787, edited by Jonathan Birnbaum and Clarence Taylor (2000), pp. 260-261. [Blackboard]
- 1917 *Bunting v. Oregon* [Goldstein] pp. 23-25 OR [Blackboard]
- "The Ballot Through Constitutional Amendment: Women Take to the Streets" [Goldstein, pp. 83-87] OR [Blackboard]
- *1917. "Woman Suffrage and the Negro" from The Messenger. Excerpted from Civil Rights Since 1787, edited by Jonathan Birnbaum and Clarence Taylor (2000), pp. 262-263. [Blackboard]
1920. The 19th Amendment [Barker&Lyles..., p. 870] or internet.
1923. *Adkins v. Children's Hospital* [Goldstein] pp. 24-36 OR [Blackboard]

Thursday February 8

- @*"Black Women and the Right to Vote,"* by Darlene Clark Hine and Christine Anne Farnham. Excerpted from Civil Rights Since 1787, edited by Jonathan **Birnbaum** and Clarence Taylor (2000), pp. 252-259. [Blackboard]. There may be an in class quiz on this reading next class session.
- *Hoff. Chapter Six: Constitutional Protection, 1908-1963, pp.192-228.
- 1924 *Radice v. NewYork* [Goldstein] pp. 37-40 OR [Blackboard]
- 1937 *West Coast Hotel Company v. Parrish* [Goldstein] pp. 41-48 OR [Blackboard]
- *1938. *U.S. v. Carolene Products Co.* See *The Gatekeepers*
- *1941 *U.S. v. Darby* [Blackboard]
- Compelling Levels of Equal Protection
- Judicial Standards and Equal Protection Review [Blackboard]
- 1948 *Goesart v. Cleary* [Goldstein] pp. 101-103 OR [Blackboard]
- The Equal Pay Act of 1963. <http://www.dot.gov/ost/docr/regulations/library/EQUALPAY.HTM> OR [Blackboard]
- "How Sex Got Into Title VII: Persistent Opportunism as a Maker of Public Policy", by Jo Freeman, in *Law and Inequality: A Journal of Theory and Practice*, Vol. 9, No. 2, March 1991, pp. 163-184. This article is available at: [Blackboard] OR <http://www.inform.umd.edu/EdRes/Topic/WomensStudies/ReadingRoom/AcademicPapers/sex-in-title-vii>. (skim article, time permitting)
- Title VII of the Civil Rights Act of 1964: Main Provisions [Blackboard]
- [Lecture] Understanding interstate commerce and Title VII

WEEK FIVE

Tuesday February 13

- 1964 *Heart of Atlanta Hotel v. U.S.* (as discussed in class) [Blackboard]
- Interpreting the Equal Protection Clause**
- 1971 *Reed v. Reed* [Barker&Lyles...], pp. 719-720, OR, [Goldstein] pp. 113-114, OR [Blackboard]
- 1973 *Frontiero v. Richardson* [Goldstein] pp. 115-126, OR [Barker&Lyles...], pp. 720-722, OR [Blackboard]
- 1976 *Craig et al. v. Boren, Governor of Oklahoma* [Barker&Lyles..., pp. 723-725], OR [Blackboard]

Thursday February 15

Compensating Women for Past Discrimination

- 1974 *Kahn v. Shevin* [Goldstein] pp. 128-132 OR [Blackboard]
- 1977 *Califano v. Webster* [Goldstein] pp. 192-195 OR [Blackboard]
- @Kimberle Crenshaw, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics," *U. Chi. Legal F.* 139 (1989), reprinted D. Kelly Weisberg, ed., *Feminist Legal Theory: Foundations* (1993), pp. 383-395. [Blackboard]

*Lyles, *The Gatekeepers*: ch. 3, pp. 37-72.

Unequal Benefits for Men and Women

*Goldstein pp. 125-166

1975. *Stanton v. Stanton* [Goldstein] pp. 159-163 OR [Blackboard]

WEEK SIX

Tuesday February 20

1975 *Weinberger v. Wisenfeld* [Goldstein] pp. 152-158 OR [Blackboard]

1977 *Califano v. Goldfarb* [Goldstein] 179-191 OR [Blackboard]

*1980 *Wengler v. Druggists Mut. Ins. Co.*

All-Male Private Social Clubs

*1987 *Board of Directors of Rotary International, et. al., v. Rotary Club of Duarte* [Barker&Lyles...], pp. 271, 276 and <http://laws.findlaw.com/us/481/537.html>

*Hooray for Hootie [Blackboard]

Unwed Fathers and Their Children

1972 *Stanley v. Illinois* [Goldstein] pp. 196-203 OR [Blackboard]

1979 *Caban v. Kazim and Maria Muhammed* [Goldstein] pp. 208-221, OR [Blackboard]

Thursday February 22

1983 *Lehr v. Robertson* [Goldstein] 222-232 OR [Blackboard]

1998 *Miller v. Albright* [Barker&Lyles...], pp. 749-752, OR [Blackboard]

Marriage and Alimony

1979 *Orr v. Orr*, [Barker&Lyles...], 725-726, OR [Blackboard]

@”The Politics of Black Feminist Thought, by Patricia Hill Collins. See

<http://www.hsph.harvard.edu/grhf/WoC/feminisms/collins1.html> OR [Blackboard] Take caution if you print this pdf file at home. There is 2 inch solid Black border on every page.

Women and the Armed Forces

1975 *Schlesinger v. Ballard* [Goldstein] pp. 133-139 OR [Blackboard]

WEEK SEVEN

Tuesday February 27

1979 *Personnel Administrator of Massachusetts v. Feeney* [Barker&Lyles...], pp. 727-731, OR [Blackboard]

1981 *Rostker v. Goldberg* [Barker&Lyles...], pp. 732-735, OR [Blackboard]

Women and Title VII (Pay and Benefits)

Repeat: Title VII of the Civil Rights Act of 1964: Main Provisions [Blackboard]

Repeat: [Lecture] Understanding interstate commerce and Title VII

Repeat 1964 *Heart of Atlanta Hotel v. U.S.* (as discussed in class) [Blackboard]

Goldstein, pp. 562-565 OR [Blackboard]

Cushman, pp. 119–122, “Title VII of the Civil Rights Act of 1964: Legislating Equality in the Workplace,” see [Blackboard]

1971 *Phillips v. Martin Marietta Corp.*, 400 U.S. 542 (1971) see [discussion in the “Cushman” reading above on Blackboard]

1971 *Griggs v. Duke Power Company* [Barker&Lyles...], pp. 512-515, OR [Blackboard].

*1974 *Corning Glass Works v. Brennan*, as discussed in Cushman, pp. 143–145 [Blackboard]

Thursday March 1

1976 *Washington v. Davis* [Barker&Lyles...], p. 513 (as above in Lyles), OR [Blackboard].

1977 *Dothard v. Rawlinson*, as discussed in Cushman, pp. 123–128, [Blackboard]

*1978 *Los Angeles Department of Water and Power v. Manhart*, as discussed in Cushman, pp. 148–151 [Blackboard], and,

*1983 *Arizona Governing Committee v. Norris*, as discussed in Cushman, pp. 148–151 [Blackboard]

*1981 *County of Washington v. Gunther*, as discussed in Cushman, pp. 145-147 [Blackboard]

*Hoff. Chapter Seven: Constitutional Equality, 1963-1990, pp. 229-275.

Women and Affirmative Action

*(skim over) *Regents of the University of California v. Bakke* [Barker&Lyles...], pp. 529-538 or [Blackboard]

*Transcript of Edited and Narrated Arguments in *Regents of the University of California v. Bakke*, as published in May It Please the Court... edited by Peter Irons and Stephanie Guotton (1993), pp. 305-314. [Blackboard]

WEEK EIGHT

Thursday March 6

Wendy Wygant v. Jackson Board of Education [Blackboard] and [Barker&Lyles...], pp. 517, 539, 540, 542, 548, 557, 612-613.

Notes from Ronald J. Fiscus, *The Constitutional Logic of Affirmative Action*, Duke University Press, 1992. [Blackboard]

“Affirmative Action” in Cushman, pp. 134–140 (including the *Johnson* case below).

1987. *Johnson v Transportation Agency, Santa Clara County, Ca.* [Goldstein], pp. 562-583 OR [Blackboard]

“Bush style” affirmative action [Blackboard]

Education and Single Sex Admission Polices

1982 *Mississippi University for Women et al. v. Hogan* [Barker&Lyles...], pp. 739-741, OR, [Goldstein] pp. 286-296, OR [Blackboard]

1984 *Grove City College v. Bell* [Barker&Lyles...], pp. 4, and 742-744, OR [Blackboard].

“Making Partner,” in Cushman, pp. 128–134, including *Price Waterhouse v Hopkins* (1989) [Blackboard].

1996 *United States v. Virginia*, [Barker&Lyles...], pp. 745-749, OR [Blackboard].

Tuesday March 8

Title IX, Education Amendments of 1972 [Blackboard]

*Lyles, *The Gatekeepers*: ch. 4, pp. 73-115.

“UIC Invites Daughters To ‘Work For A Day’” [Blackboard]

Title IX: Leveling the Playing Field, Rosemary Rood-Tutt ” [Blackboard].

Find (and bring to class) your “own” article on gender discrimination [Title IX] and NCAA sports. See also for example “Duke loses discrimination case,” [Blackboard]. Students may also find the following web site. <http://www.feminist.org/> helpful.

*National Women’s Law Center, <http://www.nwlc.org/display.cfm?section=athletics> @The Intersection of Racial and Gender Bias [Blackboard]

Women, Procreation and the Right of Privacy

Barker&Lyles... pp. 753-756 OR [Blackboard]

Goldstein, pp. 298-303 OR [Blackboard]

The Right to Privacy

Sterilization

1927 *Buck v. Bell* [Goldstein], pp. 304-305 OR [Blackboard]

1942 *Skinner v. Oklahoma*, [Goldstein] pp. 306-309 OR [Blackboard]

“Scarred by Sterilization,” by Jack Lessenberry. *The Washington Post*, [Blackboard]

Goldstein, pp. 310-312 OR [Blackboard]

WEEK NINE
Tuesday March 13

Contraception

“Woman and the New Race,” by Margaret Sanger, in Miriam Schneir, *Feminism: The Essential Historical Writing*, pp. 325-334 [Blackboard].

*1958. *NAACP v. Alabama* [Barker&Lyles...], pp. 271-274.

@The Catholic Church and Contraception (biased and undocumented)

1965 *Griswold et al. v. Connecticut* [Barker&Lyles...], pp. 756-759 OR [Blackboard]

“High Court Overturns Anti-Birth Control Law,” *Los Angeles Times*, June 8, 1965 [Blackboard]

1972 *Eisenstadt v. Baird* [Goldstein] pp. 323-332 OR [Blackboard]

*@Robin West, “Jurisprudence and Gender,” *Univ. of Chicago Law Review* 55, no. 1 (Winter 1988): 1-72.

*Hoff. Chapter Eight: The Limits of Liberalism: Marriage, Divorce, Pregnancy and Abortion, pp. 276-315.

Thursday March 15

Pregnancy

Goldstein, pp. 455-456, OR [Blackboard]

1974 *Cleveland Board of Education v. LaFleur* [Goldstein] pp. 456-463 OR [Blackboard]

1974 *Geduldig v. Aiello* [Barker&Lyles...], p. 712 and [Goldstein] pp. 465-469 OR [Blackboard]

1976 *General Electric Company v. Martha Gilbert* [Goldstein] pp. 470-480 OR [Blackboard]

1977 *Nashville Gas Company v. Satty* [Goldstein] pp. 481-488 OR [Blackboard]

1978. The Pregnancy Discrimination Act (Amends Title VII) See:

<http://www.afscme.org/wrkplace/wrfaq06.htm> OR [Blackboard].

1983 *Newport Shipbuilding and Drydock v. EEOC* [Goldstein] 489-497 OR [Blackboard]

*Lyles, *The Gatekeepers*: ch. 5, pp. 117-154.

WEEK TEN

Tuesday March 20

Goldstein, pp. 49-51, OR [Blackboard]

1987 *California Federal Savings and Loan v. Guerra* [Goldstein] pp. 52-64 OR [Blackboard]

Goldstein, p. 65 (*Wimberly v. Labor and Industrial Relations Comm.* [1987]) OR [Blackboard]

“Fertile Women Need Not Apply,” see Cushman, pp. 178-181, including *Automobile Workers v. Johnson Controls* [Blackboard]

1991. *Automobile Workers v. Johnson Controls, Inc.* [Blackboard, see above]

The Family and Medical Leave Act of 1993. <http://www.dol.gov/asp/programs/handbook/fmla.htm>

Thursday March 22

Midterm Exam

**You may NOT take the exam early; you may not take the exam late
TODAY is the DAY**

WEEK ELEVEN

Spring Break

Be prepared for the “abortion cases” marathon when we return on Tuesday April 3

WEEK TWELVE (Abortion)
Tuesday April 3

Abortion

@Lucinda M. Finley. "The Story of *Roe v. Wade*: From a Garage Sale for Women's Lib, to the Supreme Court, to Political Turmoil." [Blackboard]

1973 *Roe v. Wade* [Barker&Lyles...], pp. 759-763, OR [Blackboard].

1973 Transcript of Edited and Narrated Arguments in *Roe v. Wade*, as published in May It Please the Court... edited by Peter Irons and Stephanie Gutton (1993), pp. 343-354 [Blackboard]

@Issue 16. "Should Abortion Be Restricted: Robert Bork vs. Mary Gordon?" in *Clashing Views on Controversial Political Issues*, 12th Edition, McKenna and Feingold eds., (Guilford, Court: McGraw-Hill, 2001), pp. 280-299. [Blackboard]

*1973. *Doe v. Bolton*

Restrictions on Abortion

Goldstein, pp. 360-361 OR [Blackboard]

1976 *Planned Parenthood v. Danforth* [Goldstein] pp. 361-373, 413-414 OR [Blackboard]

1977 *Frank Beal et. al. V. Ann Doe et. al* [Goldstein] pp. 415-419 OR [Blackboard]

1977 *Edward Maher v. Susan Roe et. al* [Goldstein] pp. 421-432 OR [Blackboard]

1977 *Poelker et. al. V. Jane Doe, etc.* [Goldstein] pp. 434-436 OR [Blackboard]

1980 *Patricia Harris, Secretary of Health and Human Services v. Cora McRae* [Goldstein] pp. 438-454 OR [Blackboard]

1983 *City of Akron v. Akron Center for Reproductive Health* [Goldstein] pp. 375-394 OR [Blackboard]

1986 *Thornburgh v. American College of Obstetricians and Gynecologists* [Goldstein] pp. 396-412 OR [Blackboard]

1989 *Webster v. Reproductive Health Services, et al.* [Barker&Lyles..., pp. 763-765] OR [Blackboard].

1991 *Rust v. Sullivan* [Barker&Lyles..., p. 7, 755], [*Gatekeepers*], p. 189 n.18.

1992 *Planned Parenthood v. Casey* (1992) [Barker&Lyles..., pp. 766-771] OR [Blackboard]

1997 *Schenck v. Pro-Choice Network of Western New York* (1997)[Blackboard]

2000 *Stenberg v. Carhart.* [Blackboard]

Presidents and Abortion, excerpts from *The Gatekeepers, Federal District Courts in the Political Process* (Lyles, 1997). Also see footnote 66 describing partial birth abortion. [Blackboard].

*Lyles, *The Gatekeepers*: ch. 6, pp. 155-201.

Thursday April 5

Part III. Privacy in Varied Contexts

The 1st Amendment and Pornography (for more complete coverage, take PoLS 354 with Lyles)

Barker&Lyles... pp. 238-243 OR Blackboard.

*@Andrea Dworkin, "Against the Male Flood: Censorship, Pornography, and Equality," 8 *Harvard Women's L.J.* 1, 10-28 (1985)

1973 *Miller v. California* [Barker&Lyles..., pp. 243-247] OR [Blackboard]

1991 *Barnes v. Glen Theatre* [Barker&Lyles..., pp. 247-254] OR [Blackboard].

@1984 "Should Pornography Be Protected by the First Amendment?" *Taking Sides*, 5th edition. Judge Sarah Evans Barker, from *American Booksellers Association, Inc. v. William H. Hudnut III*, U.S. Court of Appeals for the Seventh Circuit (1984), and, Andrea Dworkin, "The Oppression of Pornography." [Blackboard]

*Hoff. Chapter Nine. The Epitome of Liberal Legalism: The ERA and Pornography, pp. 316-349.

WEEK THIRTEEN
Tuesday April 10

Sexual Orientation

@Issue 17. "Should Gay Marriage Be Legalized: Andrew Sullivan vs. James Q. Wilson?" in *Clashing Views on Controversial Political Issues*, 12th Edition, McKenna and Feingold eds., (Guilford, Court: McGraw-Hill, 2001), pp. 300-313. [Blackboard]

State map on same sex marriage [Blackboard]

Find an article on "Same Sex Marriage." Turn in the article and a typed summary (no more than one page) in class today. This assignment will count for two points on the final exam. This is required.

**Loving v. Virginia* (1967) [Blackboard]

*Transcript of Edited and Narrated Arguments in *Loving v. Virginia*, as published in May It Please the Court... edited by Peter Irons and Stephanie Gutton (1993), pp. 277-286. [Blackboard]

Homosexual Sodomy

Barker&Lyles... pp. 771-776, **OR** [Blackboard].

1986 *Bowers v. Hardwick* [Barker&Lyles... 776-781], **OR** [Blackboard].

*1986 Transcript of Edited and Narrated Arguments in *Bowers v. Hardwick*, 478 U.S. 186 (1986), as published in May It Please the Court... edited by Peter Irons and Stephanie Gutton (1993), pp. 361- 369 [Blackboard]

1996 *Romer v. Evans* [Barker&Lyles..., 781-786] **OR** [Blackboard].

Thursday April 12

No Class today, Midwest Political Science Association Meetings

WEEK FOURTEEN
Tuesday April 17

2000 *Boy Scouts of America v. Dale* [Blackboard]

2003 *Lawrence v. Texas* [Blackboard]

UIC Professor's Work Gets a Supreme Compliment [Blackboard]

Sexual Harassment

1986 *Meritor Savings Bank v. Vinson* [Goldstein] pp. 553-561 **OR** [Blackboard]

1993 *Harris v. Forklift Systems, Inc.*, [Blackboard]

EEOC Sexual Harassment Guidelines (find on your own)

UIC: Prohibiting Sexual Harassment <http://www.uic.edu/depts/oe/Harassment.htm>

Same-sex Sexual Harassment

1990 *Oncale v. Sundowner offshore Services, Inc.* [Barker&Lyles..., pp. 786-788], **OR** [Blackboard].

Sexual Harassment In Schools: Teachers Harassing Students

*1992 *Franklin v. Gwinnett County Public Schools* [Blackboard]

*1998 *Gebser v Lago Vista Independent School District* [Blackboard]

Sexual Harassment In Schools: Students Harassing Other Students

*1999 *Davis v. Monroe County School Board of Education* [Blackboard, caution 35 pages long]

Thursday April 19

All male juries

*1880 *Strauder v West Virginia* [Blackboard]

*1965 *Swain v Alabama* (Pols 252) or [Blackboard]

1967 *Hoyt v. Florida* [Goldstein] pp. 106-109 **OR** [Blackboard]

1975 *Billy Taylor v. Louisiana* [Goldstein] pp. 140-152 **OR** [Blackboard]

*1986 *Batson v Kentucky* (Pols 252) or [Blackboard]

1994 *J. E. B. v. Alabama ex. rel. T.B.* [Blackboard]

WEEK FIFTEEN

Tuesday April 24

Iron Jawed Angles (in class presentation): class will start 5 minutes early

@Lyles, *The Gatekeepers*: ch. 9, “Does Gender Make a Difference?” [Blackboard]. There may be a quiz on this material today.

1998. “Fear of a Black Feminist Planet,” by Barbara Ransby. Excerpted from *Civil Rights Since 1787*, edited by Jonathan Birnbaum and Clarence Taylor (2000), pp. 874-877. [Blackboard]

*Hoff. Chapter Ten. *Beyond Liberal Legalism: From Equality to Equity*, pp. 350-376.

Thursday April 26

Iron Jawed Angles, continued. class will start 5 minutes early

WEEK SIXTEEN

Tuesday May 1

Rape Laws

2000 *United States v Morrison* [Blackboard]

*For extra credit, Draft a short paper compiling information (data) on “gender and rape” in the United States. The paper must be turned in at the start of class today. You will earn extra points added to your MIDTERM exam score. (0-2 points)

1981 *Michael M. v. Superior Court of Sonoma County* [Barker&Lyles..., pp. 735-738], **OR** [Blackboard].

@Frances Olsen, “Statutory Rape: A Feminist Critique of Rights Analysis.” 63 *Texas L. Rev.* 387 (1984), reprinted in D. Kelly Weisberg, ed., *Feminist Legal Theory: Foundations* (1993), pp. 485-495. [Blackboard]

*1977. “Women and Lynching” by Jacquelyn Dowd Hall. *Southern Exposure*. Excerpted from *Civil Rights Since 1787*, edited by Jonathan Birnbaum and Clarence Taylor (2000), pp. 280-282.

[Blackboard]

*Lyles, *The Gatekeepers*: ch. 8, “Does Race Make a Difference?”

Thursday May 3

ALL BOOK REVIEWS ARE DUE AT THE “START OF CLASS” TODAY. [for guidelines, see Blackboard under WEEK ONE]. You may not submit your paper electronically, or leave your paper in my mailbox, or under my office door. You must bring the paper to the *START* of class today. It must be printed in BLACK ink; it must be printed single-sided; and, it must be stapled in the upper left-hand corner. **Early submissions will not be accepted.**

Assisting Suicide

1990 *Cruzan v. Missouri Department of Health* [Blackboard]

1997 *Washington v. Glucksberg* [Barker&Lyles..., pp. 788-792] **OR** [Blackboard].

Justices Accept Oregon Case Weighing Assisted Suicide [Blackboard].

Personal Liberty

*1976 *Kelley, Commissioner, Suffolk County Police Dept. v. Johnson* [Barker&Lyles...], p. 755, and [Blackboard]

*Lyles, *The Gatekeepers*: ch. 7, pp. 203-221.

*@bell hooks, *Feminists Theory: From Margin to Center*, chapter one, “Black Women Shaping Feminist Theory [Blackboard]