

# Constitutional Law: Women, Gender, Privacy and the Law

Political Science 356  
African-American Studies 356  
Gender and Women's Studies 356  
Spring Semester 2009, Professor Lyles

Version 1/10/09

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 PoLS 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. You should also subscribe to

**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](http://www.uic.edu/depts/sja/integrit.htm)

#### **Required Texts:**

**(1)** *The Constitutional and Legal Rights of Women: Cases in Law and Social Change*, Third Edition (2007). Judith A. Baer and Leslie Friedman Goldstein. ISBN13: 9780195330748, or, ISBN10: 0195330749, The 2007 edition, 650 pages.

**(2)** Lexis/Nexis via the UIC Library (online).

**OR**

**(1)** Barker, Lyles, et. al. *Civil Liberties and the Constitution* (8<sup>th</sup> edition), if you purchase my text (Barker/Lyles), make note that we will only use about 1/3 of this book for PolS 356 this semester, the

other 2/3 is *required* for PoLS 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.

(2) Lexis/Nexis via the UIC Library (online).

**Recommended:**

(1) Mariam Schneir, *Feminism: The Essential Historical Writings*

(2) Lawrence Baum. *The Supreme Court* (8<sup>th</sup> edition)

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

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

(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>

**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*

**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 Syllabus Key to locate class materials:**

[Blackboard] the "UIC Blackboard Learning System"

[Baer&Goldstein] see Baer and Goldstien, *The Constitutional Rights of Women*

[Barker&Lyles...] see Barker, Combs, Lyles, and Perry: *Civil Liberties and the Constitution* (8<sup>th</sup> 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 "at" sign "@" are **REQUIRED** (unless also preceded by an asterisk) and may **also** be critiqued for optional **extra credit**. You may earn 0-3 points per critique. 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 four typed pages. These points will be added to your next exam (either midterm or final exam—whichever comes next).

In addition to other required readings, the Supreme Court cases that are highlighted in yellow are also “required” and you must bring a typed brief to class on the day it is discussed.

### 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).

## PART I

### WEEK ONE

#### **Tuesday January 13**

Introduction.

The PoS 356 Syllabus for Spring 2009 [Blackboard] Note: students are required to check the online syllabus weekly for updates.

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

Book Review Guidelines [Blackboard]

#### **Thursday January 15**

**Note:** *if you have already taken an undergraduate constitutional law class with me [i.e., 251, 252, 353, 354, 356 or 451], then your physical attendance on **January 15, 22, 27, and 29 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 (Jan 29) 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 PoS 356.*

#### **Lecture: Courts as policymaking institutions (Part 1)**

\*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] This is a required reading. However, it can also be critiqued for extra credit points. See the Syllabus Key (page 5) for details. Your typed extra credit

critique is due at the start of class today. If you are not attending class today because you have taken a previous class (see above) you must email your paper to me by class time.

**WEEK TWO**  
**Tuesday January 20**

**Lecture: Courts as policymaking institutions (Part 2).**

We will not meet in BSB 367 today. I will be out of town. For class today, you are to watch the inauguration ceremonies (anything today) and write a one page reflection paper (typed, no more than a page or two) on the topic of the inauguration of Barack Obama and “women” in the United States. How does what you see and hear today affect/or not affect the status of women in the United States. Your paper is due at the start of class on Thursday January 22 and it will count for attendance on 1/20 as well as 0-3 extra credit points added to your midterm exam. If you are not attending class today because you have taken a previous class (see above) you must email your paper to me by class time.

**Thursday January 22**

**Lecture: Courts as policymaking institutions (Parts 2-3).**

\*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]. This is a required reading. However, it can also be critiqued for extra credit points. See the Syllabus Key (page 5) for details. Your typed extra credit critique is due at the start of class today. If you are not attending class today because you have taken a previous class (see above) you must email your paper to me by class time.

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

**WEEK THREE**  
**Tuesday January 27**

**Lecture: Courts as policymaking institutions (Part 4)**

\*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]. This is a required reading. However, it can also be critiqued for extra credit points. See the Syllabus Key (page 5) for details. Your typed extra credit critique is due at the start of class today. If you are not attending class today because you have taken a previous class (see above) you must email your paper to me by class time.

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]

**Thursday January 29**

**Lecture: Courts as policymaking institutions (Part 5, Marbury)**

**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

@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] This is a required reading. However, it can also be critiqued for extra credit points. See the [Syllabus Key \(page 5\)](#) for details. Your typed extra credit critique is due at the start of class today. If you are not attending class today because you have taken a previous class (see above) you must email your paper to me by class time.

## WEEK FOUR

**Tuesday February 3  
(Beginning of Part 1)**

**Today is the first day of REQUIRED attendance for ALL students**

### 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)

\*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]. This is a required reading. However, it can also be critiqued for extra credit points. See the [Syllabus Key \(page 5\)](#) for details. Your typed extra credit critique is due at the start of class today.

Brief Overview of the 13<sup>th</sup>, 14<sup>th</sup> and 15<sup>th</sup> Amendments. Excerpted from *African-American Legal History: Cases and Commentaries*, Chapter 3 (Lyles) [Blackboard]

1873. *Slaughterhouse Cases* [Blackboard]

Baer and Goldstein, pp. 3-8 [Blackboard]

*Brief of Bradwell's Counsel*, excerpt, [Baer and Goldstein] pp. 66-69, OR [Blackboard]

1873. *Bradwell v. State of Illinois* [Baer and Goldstein] pp. 70-72, OR [Barker&Lyles...], pp. 715-717 OR [Blackboard].

Early Struggle for the Ballot

Baer and Goldstein, pp. 73-76, OR [Blackboard]

Feminist Jurisprudence: An Overview. [http://www.law.cornell.edu/topics/feminist\\_jurisprudence.html](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](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* [Baer and Goldstein] pp. 76-83 OR [Blackboard].

1876. *United States v. Reese* [Blackboard]

1876. *United States v. Cruikshank* [Blackboard].

\*1883. *Civil Rights Cases* [Blackboard]

### **Thursday February 5**

\*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*, Barker&Lyles... pp. 463-468 OR [Blackboard].

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* [Baer and 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* [Baer and 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* [Baer and Goldstein] pp. 23-25 OR [Blackboard]

“The Ballot Through Constitutional Amendment: Women Take to the Streets” [Baer and 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 19<sup>th</sup> Amendment [Barker&Lyles..., p. 870] or internet.

@“*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.

See the [Syllabus Key \(page 5\)](#) for details. Your typed extra credit critique is due at the start of class today. There may be an in class quiz on this reading next class session.

1923. *Adkins v. Children’s Hospital* [Baer and Goldstein] pp. 24-36 OR [Blackboard]

### **WEEK 5**

#### **Tuesday February 10**

\*Hoff. Chapter Six: Constitutional Protection, 1908-1963, pp.192-228.

1924. *Radice v. New York* [Baer and Goldstein] pp. 37-40 OR [Blackboard]

1937. *West Coast Hotel Company v. Parrish* [Baer and 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* [Baer and 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  
 \*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, [Baer and Goldstein] pp. 113-114, OR [Blackboard]

### Thursday February 12

1973 *Frontiero v. Richardson* [Baer and 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]

### Compensating Women for Past Discrimination

1974. *Kahn v. Shevin* [Baer and Goldstein] pp. 128-132 OR [Blackboard]

1977. *Califano v. Webster* [Baer and 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]. This is a required reading. However, it can also be critiqued for extra credit points. See the [Syllabus Key \(page 5\)](#) for details. Your typed extra credit critique is due at the start of class today.

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

### Unequal Benefits for Men and Women

\*Baer and Goldstein pp. 125-166

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

## WEEK 6

### Tuesday February 17

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

1977. *Califano v. Goldfarb* [Baer and 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* [Baer and Goldstein] pp. 196-203 OR [Blackboard]

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

### Thursday February 19

1983. *Lehr v. Robertson* [Baer and 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] **Warning:** Take caution if you attempt print this pdf file. There is 2 inch solid Black border on every page. This is a required reading. However, it can also be critiqued for extra credit points. See the [Syllabus Key \(page 5\)](#) for details. Your typed extra credit critique is due at the start of class today.

### Women and the Armed Forces

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

### WEEK 7

#### Tuesday February 24

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]

Baer and 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]

The U.S. Equal Employment Opportunity Commission [Blackboard] or

[http://www.eeoc.gov/foia/letters/2002/titlevii\\_bfoq.html](http://www.eeoc.gov/foia/letters/2002/titlevii_bfoq.html)

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 February 26

\*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]

*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]

### WEEK 8

#### Tuesday March 3

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

1987. *Johnson v. Transportation Agency, Santa Clara County, Ca.* [Baer and 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, [Baer and Goldstein] pp. 286-296, OR [Blackboard]

Title IX, Education Amendments of 1972 [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].

### **Thursday March 5**

\*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 and NCAA sports [Title IX]. See also for example "Duke loses discrimination case," [Blackboard]. Students may also find the following web site. <http://www.feminist.org/> helpful. 2 points on the final exam. You must highlight the three most important points in the article.

\*National Women's Law Center, <http://www.nwlc.org/display.cfm?section=athletics>

@The Intersection of Racial and Gender Bias [Blackboard]. This is a required reading. However, it can also be critiqued for extra credit points. See the Syllabus Key (page 5) for details. Your typed extra credit critique is due at the start of class today.

### **WEEK 9**

### **Tuesday March 10 (Beginning of Part 2)**

\*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 and NCAA sports [Title IX]. See also for example "Duke loses discrimination case," [Blackboard]. Students may also find the following web site. <http://www.feminist.org/> helpful. 1 point on the final exam. You must highlight the three most important points in the article.

\*National Women's Law Center, <http://www.nwlc.org/display.cfm?section=athletics>

@The Intersection of Racial and Gender Bias [Blackboard]. This is a required reading. However, it can also be critiqued for extra credit points. See the Syllabus Key (page 5) for details. Your typed extra credit critique is due at the start of class today.

### **Women, Procreation and the Right of Privacy**

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

Baer and Goldstein, pp. 298-303 OR [Blackboard]

The Right to Privacy

*Sterilization*

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

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

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

Baer and Goldstein, pp. 310-312 OR [Blackboard]

### **Contraception**

"Woman and the New Race," by Margaret Sanger, in Miriam Schner, *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* [Baer and Goldstein] pp. 323-332 OR [Blackboard]

- \*@Robin West, "Jurisprudence and Gender," *Univ. of Chicago Law Review* 55, no. 1 (Winter 1988): 1-72.  
This is an optional reading. However, it can also be critiqued for extra credit points. See the Syllabus Key (page 5) for details. Your typed extra credit critique is due at the start of class today.
- \*Hoff. Chapter Eight: The Limits of Liberalism: Marriage, Divorce, Pregnancy and Abortion, pp. 276-315.

**Thursday March 12**

Catch up if behind.

**WEEK 10**

**Tuesday March 17**

Review for midterm exam today.

**Thursday March 19**

**Midterm Exam**

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

**WEEK 11**

**SPRING BREAK**

**WEEK TWELVE**

**Tuesday March 31**

**Pregnancy**

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

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

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

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

1977. *Nashville Gas Company v. Satty* [Baer and 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* [Baer and Goldstein] 489-497 OR [Blackboard]

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

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

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

Baer and 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>

@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] This is a required reading. However, it can also be critiqued for extra credit points. See the Syllabus Key (page 5) for details. Your typed extra credit critique is due at the start of class today.

**Thursday April 2**

**NO Class today, Midwest Political Science Association Meetings**

**Use this time to prepare for the "abortion case" marathon when we return on Tuesday April 7**

**Week Thirteen  
Tuesday April 7**

**Abortion**

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*, 12<sup>th</sup> Edition, McKenna and Feingold eds., (Guilford, Court: McGraw-Hill, 2001), pp. 280-299. [Blackboard]. This is a required reading. However, it can also be critiqued for extra credit points. See the Syllabus Key (page 5) for details. Your typed extra credit critique is due at the start of class today.

\*1973. *Doe v. Bolton*

**Restrictions on Abortion**

*Baer and Goldstein*, pp. 360-361 OR [Blackboard]

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

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

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

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

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

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

1986. *Thornburgh v. American College of Obstetricians and Gynecologists* [Baer and 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]

2007. *Gonzales v. Carhart*. See the following:

[http://www.reproductiverights.org/crt\\_pba.html](http://www.reproductiverights.org/crt_pba.html)

[http://www.supremecourtus.gov/oral\\_arguments/argument\\_transcripts/05-380.pdf](http://www.supremecourtus.gov/oral_arguments/argument_transcripts/05-380.pdf)

<http://docket.medill.northwestern.edu/archives/003376.php>

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 9**

**Part III. Privacy in Varied Contexts**

*The 1<sup>st</sup> 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). This is an optional reading. However, it can also be critiqued for extra credit points. See the Syllabus Key (page 5) for details. Your typed extra credit critique is due before the final exam.

\**Regina v. Hicklin*, 3 Queens Bench 360 (1868).

\**Burstyn v. Wilson* (1952) [LexisNexis]

\**Roth v. United States* (1957) [LexisNexis], as discussed in class

\**Jacobellis v. Ohio*, 378 U.S. 184, 1964, as discussed in class

\**Memoirs v. Massachusetts* (1966) [LexisNexis], as discussed in class

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*, 5<sup>th</sup> 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]. This is a required reading. However, it can also be critiqued for extra credit points. See the Syllabus Key (page 5) for details. Your typed extra credit critique is due at the start of class today.

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

## **WEEK FOURTEEN** **Tuesday April 14**

### *Sexual Orientation*

@Issue 17. "Should Gay Marriage Be Legalized: Andrew Sullivan vs. James Q. Wilson?" in *Clashing Views on Controversial Political Issues*, 12<sup>th</sup> 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.

\*1967. *Loving v. Virginia* [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].

2003. *Lawrence v. Texas* [Blackboard]

## **Thursday April 16**

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

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

### **Sexual Harassment**

1986. *Meritor Savings Bank v. Vinson* [Baer and 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]

**WEEK FIFTEEN**  
**Tuesday April 21**

**All male juries**

- \*1880. *Strauder v. West Virginia* [Blackboard]
- \*1965. *Swain v Alabama* (Pols 252) or [Blackboard]
- 1967. *Hoyt v. Florida* [Baer and Goldstein] pp. 106-109 OR [Blackboard]
- 1975. *Billy Taylor v. Louisiana* [Baer and 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]

**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]. This is a required reading. However, it can also be critiqued for extra credit points. See the Syllabus Key (page 5) for details. Your typed extra credit critique is due at the start of class today.
- \*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 April 23**

**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. This is a required reading. However, it can also be critiqued for extra credit points. See the Syllabus Key (page 5) for details. Your typed extra credit critique is due at the start of class 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.

**WEEK SIXTEEN**  
**Tuesday April 28**

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

**Thursday April 30**

**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]. This is an optional reading. However, it can also be critiqued for extra credit points. See the Syllabus Key (page 5) for details. Your typed extra credit critique is due at the start of class today.

Final Exam Schedule:

[http://www.uic.edu/depts/oar/current\\_students/calendars/final\\_exam\\_schedule.html](http://www.uic.edu/depts/oar/current_students/calendars/final_exam_schedule.html)