

African-Americans and the Law since 1954

Political Science 252
African-Americans Studies 252
Spring 2006
Professor Lyles
Version 1/10/06

9:30 - 10:45, T, R, 367 BSB
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UIC Catalog Description. Political Science 252: Survey of the African-American constitutional experience since the landmark 1954 *Brown* decision to the present day. Same as AAST 252. *Prerequisite(s)*: Grade of C or better in AAST 100 or Grade of C or better in POLS 101 or Grade of C or better in POLS 103 or Grade of C or better in POLS 190; or consent of the instructor. Recommended background: AAST 251 or POLS 251. *Cultural Diversity course*.

Note: I recommend that students complete PolS 251/AASt 251 before enrolling in PolS 252/AASt 252. Although 251 is not required, students who have not completed 251 will find the required reading load especially heavy for the first few weeks.

BRIEF COURSE DESCRIPTION

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. A critical analysis of the African-American political-legal experience provides a straight line of inquiry, a unique frame of reference, and a revealing lens through which to examine the interaction of law and politics, and the guarantees of freedom and equality in the United States. In short, this unique African-American legal experience has shaped, and continues to define, the “degree of civilization” in the United States. At the same time, as others have stated previously, “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 as a country. 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 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 history through the lens of significant decisions of the U.S. Supreme Court *since* the historic 1954 *Brown v. Board of Education* ruling.. 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.

The class is organized chronologically. Though many leading constitutional law casebooks (e.g., Barker and Lyles, *Civil Liberties and the Constitution*, 8th edition) utilize a categorical or doctrinal approach, this (PolS 252/AAS 252) 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.

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. 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.

COURSE REQUIREMENTS

All students must utilize the UIC [Blackboard](#) CoursInfo system. You can enter UIC [Blackboard](#) CoursInfo from the UIC homepage, or, go to <http://Blackboard.uic.edu/>

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

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] [[Blackboard](#)]
 Davis and Graham, *The Supreme Court, Race, and Civil Rights*.
 Additional *required* readings will be posted on [Blackboard](#).

Book Review Options (pick one):

Peter Irons. *Jim Crow's Children*
 Lyles. *The Gatekeepers*
 Fiscus. *The Constitutional Logic of Affirmative Action*
 Kozol. *Savage Inequalities*
 Whalen. *The Longest Debate: A Legislative History of the 1964 Civil Rights Act*
 Gary Orfield. *Must We Bus?*
 James W. Loewen: *Sundowner Towns*
 Aldon Morris: *The Origins of the Civil Rights Movement*
 Jack Peltason: *Fifty-Eight Lonely Men*

Optional Texts:

Barker and Lyles, et. al. *Civil Liberties and the Constitution* (8th edition)
 Baum. *The Supreme Court*

B. Assignments.

In addition to written examinations at the mid-term and final grading periods, students will prepare a written book review. Additionally, throughout the semester there may be several short out-of-class research assignments, required case briefs (turned in), 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 Essay	15%
Attendance, Quizzes, and Participation	15%

SEMINAR SCHEDULE

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

Syllabus key:

Readings preceded by an asterisk (*) are highly recommended but are **not required**.
 [AALH] African American Legal History
 [[Blackboard](#)] the "UIC [Blackboard](#)"
 [D&G] refers to Davis and Graham *The Supreme Court, Race and Civil Rights*

Note: Not all required material listed on the syllabus will be discussed in class.

WEEK ONE

Tuesday January 10

Introduction.

Review of course requirements and introductory materials.
 Constitutional Law with Lyles (handout and [Blackboard](#))

Political Science 252 Spring 2006 Syllabus (handout and [Blackboard](#)). **Note:** *students are required to check the on-line syllabus for weekly updates.*
 Book Review Guidelines [[Blackboard](#)]

Thursday January 12

Note: *if you have already taken a constitutional law class with me [i.e., 251, 353, 354, 356, or 564], then your attendance on [January 12, 17, and 19 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. 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 these classes with me prior to taking PolS 252.*

The Federal Courts

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](#)]

Lyles, *African-American Legal History*, Chapter 1 (pp. 1-70). [[Blackboard](#)]

Nature and Structure of the Legal and Political System

**Baum*, chapters 1-3

Courts as policymaking institutions.

*Dahl, Robert. "Decision-making in a Democracy: The Supreme Court as a National Policy-Maker," *Journal of Public Law*, vol. 6. (1957).

*Casper, Johnathon D. "The Supreme Court and National Policy Making," *70 American Political Science Review* (1970): 50-63.a

*Barker, Lucius. (1967). "Third Parties in Litigation: A Systemic View of the Judicial Function," *29 Journal of Politics* 41-69.

*Funston, Richard. "The Supreme Court and Critical Elections," *APSR*, September, 1975.

*Lyles, *The Gatekeepers: Federal District Courts in the Political Process*, ch. 1, p. 1-9.

WEEK TWO

Tuesday January 17

Continued...The Federal Courts

Nature, Structure, and Operation of the Supreme Court

Lyles, *African-American Legal History*, Chapter 2 (pp. 1-50). [[Blackboard](#)]

**Baum*, chapters 4-6

Thursday January 19

Continued... Courts as policymaking institutions

*Alexander Hamilton, et. al. *The Federalist Papers*, No. 78-81

Lyles, *African-American Legal History*, Chapter 2 (pp. 51-94). [[Blackboard](#)]

"A Brief Overview of the Supreme Court" (pp. 1-2).

<http://www.supremecourtus.gov/about/briefoverview.pdf>

*"Rules of the Supreme Court" <http://www.supremecourtus.gov/ctrules/rulesofthecourt.pdf>

*"Understanding the Federal Courts," www.uscourts.gov/UFC99.pdf

WEEK THREE**Tuesday January 24**

Lyles, *African-American Legal History*, Chapter 3 (pp. 1-97). [Blackboard]

**The Story of Marbury v Madison*, by Michael W. McConnell, in *Constitutional Law Stories*, edited by Michael C. Dorf (New York: Foundation Press, 2004), pp. 13-31. [Blackboard]

*For extra credit (0-3 points) added to your *first* exam score, write a short essay/critique (about 3-4 typed pages) summarizing the main points in *The Story of Marbury v Madison*, by Michael W. McConnell (above). In addition to providing a complete summary of the reading, provide also your own assessment of the material covered, do you agree or disagree, why? Is this discussion relevant today, in 2006? Your extra credit essay is due TODAY.

In class discussion, Lyles, *African-American Legal History*, Chapter 1 (pp. 1-70).

Thursday January 26

In class discussion: Lyles, *African-American Legal History*, Chapter 2 (pp. 1-94).

Lyles, *African-American Legal History*, Chapter 3 (pp. 1-97).

WEEK FOUR**Tuesday January 31**

In class discussion: Lyles, *African-American Legal History*, Chapter 3 (pp. 1-57).

Thursday February 2

In class discussion: Lyles, *African-American Legal History*, Chapter 3 (pp. 57-97).

WEEK FIVE**Tuesday February 7**

Cumming v. Board of Education [Blackboard]

Argument for Defendant in Error: *Berea College* [Blackboard]

Berea College v. Kentucky (1908) D&G p. 53–

Missouri ex rel. Gaines v. Canada (1938) D&G p.103–

Sweat v. Painter (1950) D&G p.106–

McLaurin v. Oklahoma State Regents (1950) D&G p.105

Davis and Graham, pp. 115-161.(Skim)

Thursday February 9

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].

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, 1954, D&G p.164

Brown v. Board of Education II, 1955, D&G p.167

Five Questions of the *Brown* Litigation, Box 3.1, D&G p.120.

Bolling v Sharpe (347 U.S. 497, 1954) D&G p.166

Judicial Standards and Equal Protection Review [Blackboard]

WEEK SIX**Tuesday February 14**

Film: Simple Justice (1954)

Joel Kovel, *White Racism, a Psychohistory* (1970), chapter 4, “The Fantasies of Race.” [Blackboard]

Thursday February 16**Film: Simple Justice (1954)**

The Southern Manifesto: A Declaration of Constitutional Principles [Blackboard].
Cooper v Aaron (1958) [Blackboard]

WEEK SEVEN**Tuesday February 21****PBS Video, "Eyes on the Prize, Episode 2: Fighting Back (1957-62)."**

The doctrine of interposition

Transcript of Edited and Narrated Arguments in *Cooper v Aaron* (1958), as published in *May It Please the Court...* edited by Peter Irons and Stephanie Gutton (1993), pp. 249 -257. [Blackboard]

Daisy Bates "The Long Shadow of Little Rock" [Blackboard]

Thursday February 23*NAACP v. Alabama*, (357 U.S. 449) D&G p.169*Boynton v. Virginia* (1960) D&G p.176*Burton v. Wilmington Parking Authority* (1961) D&G p.179*Garner v. Louisiana* (1961), D&G p. 181.**WEEK EIGHT****Tuesday February 28***NAACP v. Button*, (371 U.S. 415, 1963), p. 130 only*Watson v. Memphis* (373 U.S. 526, 1963), p. 141 only*Griffin v. Prince Edward County* (377 U.S. 218, 1964), [Blackboard].

Lecture: The Interstate Commerce Clause

Review the Civil Rights Act of 1964 CRA, see Davis and Graham, p. 150-151.

Thursday March 2*Heart of Atlanta Motel Inc. v. United States* (1964), D&G p.195–

Transcript of Edited and Narrated Arguments in *Heart of Atlanta Motel Inc. v. United States*, as published in *May It Please the Court...* edited by Peter Irons and Stephanie Gutton (1993), pp. 263-271.

[Blackboard]

Katzenbach v. McClung (1964) [Blackboard]*Hamm v. City of Rock Hill* (1964), p. 184**WEEK NINE****Tuesday March 7**

Catch up, Make up, and Review

Thursday March 9**In-class Midterm Exam****WEEK TEN****Tuesday March 14****Rogers v. Paul* (382 U.S. 198, 1965)**Cox v. Louisiana* 1&2 (1965) D&G p.188 and 190*Swain v. Alabama* (1965), p. 159 and 210-212**United States v. Jefferson County Board of Education* (372 F. 2d 836, 1966)**Adderly v Florida*, (385 U.S. 39, 1966)**Walker v. Birmingham* (388 U.S. 307, 1967) D&G p.192*Colegrove v Green* (1946)*Gomillion v. Lightfoot* (1960) D&G p.172–

Baker v. Carr (1962) [Hint: see the "model brief" in Melone, pp. 104-114. "Why and How to Brief a Case." [Blackboard, Week One]

Review the Main Provisions of the Voting Rights Act of 1965, see Davis and Graham, p. 133 Box 3.3, p. 234 Box 4.1; and/or, *Gatekeepers*, pp. 13, 33 n.20, 89-90, 145 n.18, 101, 136, Preclearance, p. 93. Voting Rights Act, Commentary from Lyles, *The Gatekeepers*, pp. 89-90 [Blackboard]
South Carolina v. Katzenbach (1966) D&G p.173–
 **Reitman v. Mulkey* (1967)

Thursday March 16

Loving v. Virginia (1967) D&G p.214
 *Transcript of Edited and Narrated Arguments in *Loving v. Virginia*, as published in *May It Please the Court...* edited by Peter Irons and Stephanie Guotton (1993), pp. 277-286. [Blackboard]
Green v. County School Board of New Kent County (1968) D&G p.168
 Title VIII, Main Provisions of the Fair Housing Act of 1968, D&G, p. 154, Box 3.5.
Jones v. Alfred H. Mayer Co. (1968) D&G p.197
Alexander v. Holmes County Board of Education (396 U.S. 19, 1969), p. 218 only
Griffin v. Breckenridge (1971) D&G p.204

WEEK ELEVEN

SPRING BREAK

Tuesday March 21 and Thursday March 23

WEEK TWELVE

Tuesday March 28

Davis and Graham, pp. 217-272, skim..
Palmer v Thompson, see pp. 299-304 in the article below.
Palmer v. Thompson, the argument as edited and narrated in *May It Please the Court...* edited by Peter Irons and Stephanie Guotton (1993), pp. 291-304. [Blackboard]
Swann v. Charlotte-Mecklenburg Board of Education (1971) D&G p.274
 The Equal Educational Opportunities Amendment
 *Lyles, *The Gatekeepers*: ch. 5, pp. 117-154, especially pp. 121-123, and, 134-135.
 Title VII of the Civil Rights Act of 1964: Main Provisions, D&G p.239.

Thursday March 30

Griggs v. Duke Power Co. (1971) D&G p.304
Moose Lodge No. 107 v. Irvis et. al. (1972), pp. 267-268 only
Keyes v. School District No. 1, Denver Colorado (1973) D&G p.281
San Antonio Independent School District v. Rodriguez, (1973), see Lyles, Chapter 20, “The Poor in Court,” pp. 819-826, in Barker and Lyles, et. al. *Civil Liberties and the Constitution (8th edition)*, or, [Blackboard]

WEEK THIRTEEN

Tuesday April 4

Milliken v. Bradley (1974) D&G p.277
Runyon v. McCrary (1976), D&G p 284
Pasedena City Board of Education v. Spangler (1976) D&G p. 221 only
Hills v. Gautreaux, (1976), D&G p. 254 only

Thursday April 6

Washington v. Davis (1976) D&G p.306
Village of Arlington Heights, Illinois v. Metropolitan Housing Development Corp. (1977), pp. 254-255.
 **United Jewish Organization v. Carey* (1977), D&G p.301
 **De Funis v. Odegaard* (1974) D&G p. 246 only
Regents of the University of California v. Bakke (1978) D&G p.309–

*(please skim but not required) 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 Gutton (1993), pp. 305-314. [[Blackboard](#)]

Who Invented White People? A Talk on the Occasion of Martin Luther King, Jr. Day, 1998 by Gregory Jay, Professor of English, University of Wisconsin—Milwaukee [[Blackboard](#)]

WEEK FOURTEEN

Tuesday April 11

**City of Richmond, Virginia v. J. A. Croson Co.*, (1988), D&G p.430

**Martin v. Wilks* (1989), D&G p. 374 only.

**Patterson v. McLean Credit Union*, (1989), D&G p. 376 and D&G p.440

**Wards Cove Packing Company v. Atonia* (1989), D&G p.437

The Civil Rights Act of 1991: Main Provisions, D&G p.375.

Lyles, The Gatekeepers, pp. 159 and 190 n35. [[Blackboard](#)]

**Metro Broadcasting Inc. v. Federal Communications Commission*, (1990), D&G p.434

**Missouri v. Jenkins*, D&G p. 359 only.

Thursday April 13

United Steel Workers of America v. Weber (1979), D&G p.317, or, Lyles, *Gatekeepers*, pp. 133-134.

“Bush style” affirmative action [[Blackboard](#)]

City of Mobile v. Bolden (1980) D&G p. 291

Fullilove v. Klutznick, (1980), D&G p. 320–

Memphis v. Greene (1981), D&G p.335

Bob Jones University v. United States (1983) D&G p.287

Letter From Bob Jones University, 1998, [[Blackboard](#)]

WEEK FIFTEEN

Tuesday April 18

**Memphis Firefighters v. Stotts* (1984), p. 249 and, *Gatekeepers*, pp. 133, 150 n.115.

**Palmore v. Sidoti* (1984), D&G p. 161 only

**Batson v. Kentucky* (1986), D&G p.346

Wygant v. Jackson, Board of Education (1986), D&G p.324

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

**Local 28 of Sheet Metal Workers v. EEOC*, (1986), p. 249 only

**Thornburg v. Gingles* (1986), D&G p. 295

Davis and Graham, pp. 355-406, skim

Board of Education Oklahoma City Public Schools v. Dowell (1991), D&G p.412

Freeman v. Pitts, (1992), D&G p.414

**Adarand Constructors, Inc. v. Pena*, 1995. See *Gatekeepers*, p. 196, n. 54, and Barker/Lyles, pp. 545-551 [[Blackboard](#)]

Hopwood v. Texas, 1996. Barker/Lyles, [[Blackboard](#)].

**United States v. Fordice* (1992), D&G p. 418.

**R.A.V. v. City of Saint Paul, Minnesota* (1992), D&G p.451

Presley v. Etowah County Commission (1992), D&G p. 422

Shaw v Reno (1993), D&G p. 425

Grutter v. Bollinger (2003) [[Blackboard](#)] (skim)

Gratz v. Bollinger (2003) [[Blackboard](#)] (skim)

Thursday April 20

Lecture: The limits of judicial power and the state of Black America.

Lyles. The Gatekeepers, Chapter 8, “Does Race Make a Difference?: Perceptions and Attitudes of African-American, Latino and White District Court Judges [Blackboard]
 “No Bell Curve Here,” [Blackboard] or <http://www.nwu.edu/IPR/news/iqgap.html>
 Job Search Harder With “Black Name” [Blackboard]

WEEK SIXTEEN**Tuesday April 25****Lecture continued....: The limits of judicial power and the state of Black America.**

- *"Black Men as Inmates Since 1980" [Blackboard]
- *Ten Myths About Affirmative Action [Blackboard]
- *The Sentencing Project, “Losing the Right to Vote: The Impact of Felony Disenfranchisement Laws in the United States. <http://www.hrw.org/reports98/vote/> OR [Blackboard]
- **United States v. Paradise* (1987), p. 369 only
- **Louisiana ex. rel. Francis v. Resweber* (1947)
- **Furman v. Georgia* (1972), D&G p.257-260 and 338-346.
- **Gregg v. Georgia* (1976), D&G p.260
- McCleskey v. Kemp* (1987) D&G p. 382-384, and, 445–

Thursday April 27

“Beyond Brown” in class presentation.

Final Class, makeup, review for final exam and summation.

*******Book reviews are due today, no extensions*******