

UNIVERSITY OF FLORIDA HONORS PROGRAM

**SEX AND LAW
Fall 2017; Section TBD**

Class Meetings:	M Period 8 (3:00 PM - 3:50 PM) W Period 8 - 9 (3:00 PM - 4:55 PM)
Location:	Little 117
Instructor:	Prof. Black
Office:	ARCH 450/ Holland 184A
Office Hours:	TBD
E-mail:	jblack@ufl.edu

COURSE DESCRIPTION

United States Supreme Court Justices brought law into alignment with the larger culture when they legalized same-sex marriage in June 2015. However, that endorsement of marriage equality was not the first time law has been used to regulate sexual practice. SEX AND LAW explores the history of law's regulation of sexuality in America—especially as it intersects with larger issues of race, religion, urban life, citizenship, and gender. It reveals that legal change tends to lag behind social change.

This course is designed to equip students to better understand the moral and legal regulation of sexuality in the past—and the implications of that regulation today. Together, we will use legal opinions and book manuscripts to investigate everyday life and to probe questions about law and its social environment. Does law lag behind society? In what ways does law regulate and legitimate sexual norms? How do legal decisions create, define, and resolve conflict? Does law shape society; does society shape law? We will also examine the relationship between sexuality and law to explore evolving sexual norms, and to interrogate the gap between legal aspirations and everyday legal practice.

LEARNING OBJECTIVES

As a result of taking this course, students will be able to:

- Demonstrate an in-depth knowledge of laws' sexual, social, and political contexts
- Evaluate uses of evidence in historical interpretation
- Communicate ideas persuasively and effectively, both orally and in writing
- Evaluate and debate legal and ethical questions about the meaning of issues—like freedom and liberty—which are not easily resolvable, but which have long-term intangible value
- Draw connections between legal knowledge and the practices of citizenship

COURSE TEXTS

- McLaurin, Celia, *A Slave*
- McGuire, *At the Dark End of the Street: Black Women, Rape, and Resistance*
- Kathy Peiss, *Major Problems in the History of American Sexuality* (selections)

COURSE POLICIES

Special Accommodations: Students requesting classroom accommodation must first register with the Disability Resource Center at University of Florida Dean of Students Office, [HERE](#). The Dean of Students Office will review the case and, if appropriate, provide documentation to the student who must then provide this documentation to the instructor when requesting accommodation.

Attendance: Attendance is MANDATORY. Roll will (typically) be taken each class. Please notify me beforehand if you need to miss a class. If you incur more than three absences, your course grade will go down one letter grade increment for every additional class missed. You are expected to come to class on time (arriving before the class is scheduled to begin) and to stay until the end. Please let me know before class if you must leave early.

Participation: You are expected to come to class on time, prepared, and ready to participate. Your participation will contribute to the learning of your fellow classmates. A significant percentage of your grade will be determined by your participation.

Late Assignments: If you are unable to turn in an assignment on time, please contact me BEFOREHAND to discuss alternatives. Late assignments typically cannot be accepted. Those that are accepted will be docked a letter grade increment each full day (24 hour period) they are late. Requirements for class attendance and make-up exams, assignments, and other work are consistent with university policies that can be found [HERE](#).

Computer Use: Students can use electronic devices only with special permission. Otherwise, computers, tablets, and phones—all electronic devices—are NOT permitted for use in this class. Students found to be using electronic devices during class time will be docked one whole letter grade. This policy is for your benefit, for the benefit of your fellow learners, and for my benefit.

Classroom Climate: Equitable participation in this class requires the use of inclusive language, methods, and materials. Students are expected to use inclusive language in written and oral work, and to respect diversity in viewpoints expressed by others. Students are also encouraged to identify language, methods, and materials used in this course that do not contribute to an inclusive classroom climate. Please let me know if you have any concerns.

Academic Integrity and the UF Honor Code: All students at the University of Florida are expected to adhere fully to University of Florida Student Honor Code [HERE](#). The Honor Code outlines the expectations for student conduct in regard to academic honesty. All students should review this policy. The policy places full responsibility on students to know and adhere to these standards for academic integrity. All examinations, quizzes, projects, and assignments are subject to this policy. Maintaining strict academic integrity is a priority; all instructors will fully enforce the UF Honor Code in their classes.

Incomplete Grades: An incomplete grade is described in the Undergraduate Catalog. It is the instructors' discretion as to what extenuating circumstances warrant adequate excuse for not completing required course work.

Course Evaluations: Students are expected to provide feedback on the quality of instruction in this course based on 10 criteria. These evaluations are conducted online at <https://evaluations.ufl.edu>. Evaluations are typically open during the last two or three weeks of the semester, but students will be given specific times when they are open. Summary results of these assessments are available to students [HERE](#).

Expectations:

You can expect me to:

- Plan and facilitate learning opportunities that will help you meet the course goals and objectives
- Provide constructive feedback on your performance
- Bring my teaching expertise and experience into the classroom
- Be open-minded in responding to your ideas and suggestions
- Allow you to wrestle with ideas to shape your own conclusions

What I Expect From You:

- Do the reading
- Show up to class on time
- Courtesy—at all times—for each other and for course contents and subject matter

COURSE ASSIGNMENTS

Attendance, Participation & Notecards	15%
Discussion Reading	15%
Quizzes	10%
Midterm	25%
Final Exam	35%

Grading Rubric:

A+: 97-100	A: 94-96	A-: 90-93	
B+: 87-89	B: 84-86	B-: 80-83	
C+: 77-79	C: 70-76	C-: 70-73	
D+: 67-69	D: 64-66	D-: 60-63	F: <60

Assignments:

- **Midterm:** The midterm will be given in class during Week 5. It will consist of essay questions and short answer identifications. In the week before the exam, you will receive a list of essay questions (but not a list of identifications) from which to prepare.

Note: This syllabus provides a general outline of this course. The professor reserves the right to alter the course in response to academic conditions and to new opportunities.

- **Final:** The final exam will be given during the exam schedule. It will consist of essay questions and short answer identifications. In the week before the exam, you will receive a list of essay questions (but not a list of identifications) from which to prepare.
- **Attendance and Participation:** This course deals with sensitive material. In addition to attending each class, completing all required readings, and engaging in course content, I expect students to treat each other with respect and courtesy at all times. Poor preparation and unexcused absences will significantly lower your attendance and participation grade. In extreme circumstance, students acting discourteously will be excused from the class.
- **Notecards:** Students (who are not presenting) are expected to post to the course blog notecards in response to each “Discussion Reading” article. We will read five articles together. These notecards are due before the beginning of class; students **MUST** come to “Discussion Article” classes prepared to discuss the reading. Your notecard, which will be graded out of 2.5 points, must identify three things:
 - What you think is the most crucial/compelling point in the text?
 - Why you think this is the most crucial/compelling point?
 - How does the article relate to two (or more) of the required readings (legal opinions and PDF primary sources)? You must explain the connection.
- **Quizzes:** There will also be several quizzes given on an unannounced basis. They will be short (5-10 minutes) and consist of identifications, multiple choice, or matching questions. Typically, one question from each quiz will be taken from supplemental readings. These quizzes are given to ensure you are keeping up with your reading and have a working knowledge of the subject matter.
- **Discussion reading:** In organized teams, students will lead a discussion of a course reading—typically an article.
 - As a discussion leader, you have many responsibilities: to clarify concepts and issues; promote discussion; keep students engaged and on track. Remember, you are a facilitator. Your goal is to guide, focus, and structure the discussion.
 - Try not to ask “yes” or “no” questions; instead, develop open-ended questions that will spur your fellow students to share their own ideas about the reading. Although you may not need to draw on all of your prepared questions, you must be prepared to answer all questions that you ask.
 - You have a fair amount of latitude in how you can structure these group discussions: question & answer format, role-play format, small group exercises format, or debate-an-issue format.
 - Requirements:
 - You are also required to prepare and submit a handout to me (single spaced, 12 point type, with your name) at the beginning of the presentation class that does the following four things.
 - Identifies the **three** most crucial/compelling points in the readings.
 - Explains why you think these are the most crucial points.

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- Identifies two points of comparison between the discussion reading and the primary material (like a legal opinion or a PDF reading)
 - Lists the 4-6 questions that you prepared for class
- Discussion leaders **must** meet with the professor before the class immediately preceding your presentation to discuss plans. Please have the article read before this meeting.

WEEKLY SCHEDULE

[August 21] – Class 1: Introduction, Approaches, and Overview

Goals:

- Review Syllabus
- Discuss and Legal Approaches

[August 23] – Class 2: Marriage: Current Standing

Goals:

- Be introduced to both the process and the content of the course
- Be introduced to legal concepts

Recommended Reading:

- [*Obergefell v. Hodges*](#) (2015)
- Hendrik Hartog, "Pigs and Positivism," *University of Wisconsin Law Review* 4 (1985), 899-935.

[August 28] – Class 3: Colonial America—Salem Witch Trials

Goals:

- Be introduced to sexual regulation in colonial America

Required Reading:

- Massachusetts Colony's Laws on Sexual Offence, 1641-1660 (PDF)
- William Bradford Witnesses "Wickedness Breaking Forth" in Puritan Plymouth, 1642 (PDF)

[August 30] – Class 4: Midwifery

Goals:

- Be introduced to approaches to childbirth
- Be introduced to the regulation of childbirth

Required Reading:

- TBD

Discussion Reading:

- Ulrich, *A Midwife's Tale: The Life of Martha Ballard, Based on Her Diary, 1785-1812* CH. 1 (PDF)

[September 4] – Class 5: Labor Day—No Class

[September 6] – Class 6: Status in Early America—*Martin v. Massachusetts* (1805)

Goals:

- Understand officials' efforts to use law to regulate sex in the early republic

Required Reading:

Note: This syllabus provides a general outline of this course. The professor reserves the right to alter the course in response to academic conditions and to new opportunities.

- A Trial For Rape in New York, 1793 (PDF)
- Boston Female Moral Reformers Condemn “Licentious Men,” 1838 (PDF)

Discussion Reading:

- Rachel Hope Cleves, “‘What, Another Female Husband?’: The Pre-History of Same-Sex Marriage in America,” *Journal of American History* 2015 (101), 1055-1081.

[September 11] – Class 7: Sex and Slavery—Discuss Celia’s Story

Goals:

- Be introduced to legal debates over sexual regulation and slavery

Required Reading:

- McLaurin, *Celia’s Story*

[September 13] – Class 8: Sex and Slavery—Continued

Goals:

- Be introduced to legal debates over sexual regulation and slavery

Required Reading:

- Fugitive Slave Lewis Clark Explains Why “A Slave Can’t Be A Man” (PDF)
- Dr. Esther Hill Hawkes Recounts the Rape of “Susan Black,” 1865 (PDF)
- J.W. Lindsay Describes Sexual and Family Relations Under Slavery, 1863 (PDF)

[September 18] – Class 9: Government regulation of Sex—The Comstock Act

Goals:

- Understand debates over the legal regulation of birth control

Required Reading:

- [Comstock Act, 1873](#) (scroll down, 598-560)
- National Police Gazette Advertisements for Sexual Literature and Devices, 1867, 1869, 1893 (PDF)
- Dr. Ely Van De Warker Discusses the Sale of Abortifacient Drugs, 1873 (PDF)
- Anthony Comstock Condemns Obscene Literature, 1883 (PDF)

Recommended Reading:

- Shirley J. Burton, Obscene, Lewd, and Lascivious: Isa Craddock and the Criminally Obscene Women of Chicago, 1893-1913,” *Michigan Historical Review* 19 (1993): 1-16. [PDF]

[September 20] – Class 10: Sex and Choice

Goals:

- Be introduced to legal debates over sexual equality

Required Reading:

- Victoria Woodhull Denounces “The Scare Crows of Sexual Slavery” (PDF)

Note: This syllabus provides a general outline of this course. The professor reserves the right to alter the course in response to academic conditions and to new opportunities.

- Margot Sanger Argues the Case for Birth Control, 1917 (PDF)
- Women write Margaret Sanger for Birth Control Advice, 1924, 1930, 1935, 1936 (PDF)

Recommended Reading:

- Jesse Battan, “‘The World Made Flesh’: Language, Authority and Sexual Desire in Late-Nineteenth Century America,” *Journal of the History of Sexuality* 3 (1992): 223-244. [PDF]

[September 25] – Class 11: Mormonism, Sex, and the State

Goals:

- Understand uses of law to regulate sexual practice associated with religion and government

Required Reading:

- [*Maynard v. Hill*](#) (1888)

[September 27] – Class 12: Mormonism—Discussion Reading

Goals:

- Be introduced to legal debates over sexual regulation and slavery

Discussion Reading:

- Sarah Barringer Gordon, “The Liberty of Self-Degradation”: Polygamy, Woman Suffrage, and Consent in Nineteenth-Century America,” *Journal of American History* 83 (1996), 815-47.

[October 2] – Class 13: Gender, Work, and the City

Goals:

- Be introduced to the sexual regulation of the workplace
- Understand the sexual regulation of urban life and immigrants

Required Reading:

- [*Muller v. Oregon*](#) (1908)

Recommended Reading:

- *Ritchie v. Illinois* (1895)
- *Bradwell v. Illinois* (1872)
- *United States v. Bitty* (1908)

[October 4] – Class 14: Gender, Work, and the City, Continued

Goals:

- Be introduced to the sexual regulation of the workplace
- Understand the sexual regulation of urban life and immigrants

Required Reading:

Note: This syllabus provides a general outline of this course. The professor reserves the right to alter the course in response to academic conditions and to new opportunities.

- A Government Agent Explains the White Slave Traffic, 1911 (PDF)
- Emma Goldman Analyses Traffic in Women, 1911(PDF)
- Mann Act, 1910
- A Government Agent Explains the White Slave Traffic, 1911
- Clifford Roe, *The Great War on White Slavery*, 1911 (selections)

****Midterm Handout****

[October 9] – Class 15: Sex and Citizenship—Top Down and Bottom Up

Goals:

- Understand the ways that judges and bureaucrats made sexuality the basis of citizenship

Required Reading:

- [*Minor v. Happersett*](#) (1875)
- [Nineteenth Amendment](#) (1920)

Recommended Reading:

- Joel E. Black, “Citizen Kane: The Everyday Ordeals and Self-Fashioned Citizenship of Wisconsin’s ‘Lady Lawyer,’” *Law and History Review*, 33 (2015), 201-230.

Discussion Reading:

- Margot Canaday, “Building a Straight State: Sexuality and Social Citizenship under the 1944 G.I. Bill,” *The Journal of American History* 90 (December 2003), 935-957.

[October 11]— Class 16: Midterm

- Midterm given during class time—please remember to **bring an exam book**

[October 16]— Class 17: No Class—Begin Reading *Dark End of the Street*

[October 18] – Class 18: Eugenics—Sterilization

Goals:

- Understand how judges and courts interpreted and justified sterilization policies

Required Reading:

- [*Buck v. Bell*](#) (1927)
- [*Oklahoma v. Skinner*](#), (1942)
- The Supreme Court Upholds Forced Sterilization, 1927 (PDF)

[October 23] – Class 19: *Howl*—Law and Obscenity

Goals:

- Understand evolving conceptions of obscenity
- Understand how judges and courts interpret obscenity

Required Reading:

Note: This syllabus provides a general outline of this course. The professor reserves the right to alter the course in response to academic conditions and to new opportunities.

- [*Roth v. United States*](#) (1957)

Recommended Reading:

- [*Ginsberg v. New York*](#) (1968)
- Joel E. Black, “Ferlinghetti on Trial: The *Howl* Court Case and Juvenile Delinquency,” *Boom: A Journal of California* 2 (2012), 27–43.

[October 25] – Class 20: Cold War Sex

Goals:

- Understand how Cold War officials censured sexual practices

Required Reading:

- [*Cole v. Young*](#) (1956)
- [*Executive Order 10450*](#) (1953)
- The US Senate Investigate “Sex Perverts” in Government, 1950 (PDF)
- Psychiatrist Fredric Wertham “Outs” Batman and Robin, 1953 (PDF)

[October 30] – Class 22: Discuss *Dark End of the Street*

Required Reading

- McGuire, *At the Dark End of the Street: Black Women, Rape, and Resistance*

[November 1] – Class 24: Miscegenation—*Loving v. Virginia*

Goals:

- Understand effort to use law to restrict marriage

Required Reading:

- [*Loving v. Virginia*](#) (1967)

Discussion Reading:

- Peggy Pascoe, “Miscegenation Law, Court Cases, and Ideologies of “Race” in Twentieth-Century America,” *The Journal of American History*, 83 (1996), 44-69.

[November 6]—Class 23: Endocrine—Transgender—Christine Jorgensen

Goals:

- Understand Effort to Interpret Transgender Life

Required Reading

- “The Great Transformation *Time* December 15, 1952, 58-59.
- “The Case of Christine,” *Time* April 20, 1953, 82-84.
- *Thomas or Thomasine? A Case for Transvestism in Virginia, 1629* (PDF)

[November 8] – Class 25: Endocrine—Birth Control

Goals:

Note: This syllabus provides a general outline of this course. The professor reserves the right to alter the course in response to academic conditions and to new opportunities.

- Understand challenges to restrictions on birth control
- Understand new interpretations of birth control

Required Reading:

- [*Griswold v. Connecticut*](#) (1965)

Recommended Reading:

- *Poe v. Ullman* (1961)
- *Eisenstadt v. Baird* (1972)

[November 13] – Class 26: Abortion—*Roe v. Wade*

Goals:

- Understand how judges interpreted abortion
- Understand how judges interpreted a right to privacy

Required Reading:

- [*Roe v. Wade*](#) (1973)

Recommended Reading:

- *Casey v. Planned Parenthood* (1991)

[November 15] – Class 17: Criminal Sex—*Bowers v. Hardwick*

Goals:

- Understand how judges and courts interpreted and criminalized sexual practices

Required Reading:

- [*Bowers v. Hardwick*](#) (1986)

Recommended Reading:

- *Romer v. Evans* (1996)
- *Lawrence v. Texas* (2003)
- D. Hunter Defies the Court in the Sharon Kowalski Case, 1991 (PDF)

[November 20] – Class 27: Thanksgiving—No Class

[November 22] – Class 28: Thanksgiving—No Class

[November 27] – Class 29: Sexually Transmitted Disease

Goals:

- Be introduced to legal efforts to interpret sexually transmitted diseases

Required Reading:

- [*Bragdon v. Abbott*](#) (1998)
- Nurse Eunice Rivers Describes the Tuskegee Syphilis Study, 1953 (PDF)
- President Bill Clinton Apologizes for the Tuskegee Syphilis Study, 1997 (PDF)

Note: This syllabus provides a general outline of this course. The professor reserves the right to alter the course in response to academic conditions and to new opportunities.

- The Denver Principles to Empower People with Aids, 1983 (PDF)
- Cleveland's Black Community Responds to Aids, 1998 (PDF)

[November 29] – Class 30: Endocrine—Fertility and Technology

Goals:

- Understand the legal responses to new technology

Required Reading:

- [Davis v. Davis](#) (1992)
- “Birthright – What’s next for Planned Parenthood” (Jill Lepore)
- “To Have and to Hold – Reproduction, Marriage, and the Constitution” (Jill Lepore)
- “Understanding Reproductive Justice” (Loretta Ross).

Recommended Reading:

- *Astrue v. Capato* (2012)
- *Whole Woman’s Health v. Hellerstedt*, 579 U. S. ____ (2016). Summary at <https://www.oyez.org/cases/2015/15-274>
- *Tummino v. Hamburg*, 936 F.Supp.2d 162 (E.D.N.Y. [2013](#))

[December 4] – Class 20: Marriage Equality

Goals:

- Understand the law of marriage equality
- Review major course themes and developments

Required Reading:

- [United States v. Windsor](#) (2013)

Recommended Reading:

- *Obergefell v. Hodges* (2015)
- “After Obergefell: How the Supreme Court Ruling on Same-Sex Marriage has Affected Other Areas of Law” [HERE](#)

[December 6] – FINAL EXAM (in class)