

GENDER IN LAW

Spring 2017

POL-UA 336/ LWSOC-UA 336

Professor Christine Harrington

Course Assistant: Arina Cocoru

Office hours: Tues, 2:00-3:30

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This course focuses on gender politics in law. The main objective is to learn how law and legal institutions are mobilized as arenas for structuring, challenging, and transforming gender norms, identities, and roles. We study how social relations are gendered by particular kinds of law (i.e., constitutional, civil rights, family, criminal, and international), such as employment, education, marriage, and sexuality. We also consider how law regulates our bodies (e.g., transgender processes, reproduction, pregnancy).

You will learn to identify and analyze gendering in law and politics. Specifically, how this phenomenon is mobilized *and* counter-mobilized as an economic and cultural resource in U.S. and international politics. The full meaning of this sentence will become clear(er) as you learn the language of law, key concepts, analytical approaches, and normative arguments in this field.

Required Work

You should read all the required materials *before* class and be prepared to discuss the major issues raised in the material, as well as ask questions about the readings and the lectures. You are strongly encouraged to read recommended readings, which are listed on the syllabus and will be mentioned in lectures. These reading are included for two reasons: 1) to provide you with background material; and 2) to deepen your understanding of the cultural, social, economic and political roles law and legal institutions perform in the field of gender politics.

In addition to doing the readings & participating in discussions, your grade will be based on:

1. In-class Mid-Term Exam, Thursday **March 9th** (25%);
2. A critical essay (1,500 words) in response to a prompt you will be given (25%). The prompt and relevant documents will be posted on March 31st and your paper is due on **April 10th** by **12:00 PM**; and
3. Comprehensive Final Exam (50%) Thursday, **May 11th**, **10:00-11:50 AM**.

Required Books*

Baker, Carrie N. *The Women's Movement Against Sexual Harassment*. NY: Cambridge University Press, 2008.

Schreiber, Ronnee. *Righting Feminism: conservative women & American politics*. NY: Oxford University Press, 2008.

Corrigan, Rose. *Up Against A Wall: Rape Reform and the Failure of Success*. NY: NYU Press, 2013.

Fineman, Martha. *The Neutered Mother, the Sexual Family: and other twentieth century tragedies*. NY: Routledge, 1995.

Cramer, Renée Ann. *Pregnant with the Stars: Watching and Wanting the Celebrity Baby Bump*. Stanford: Stanford University Press, 2015.

* All other readings listed on the Course Outline will be posted on *NYU Classes*.

Recommended

Bumiller, Kristin. *In an Abusive State: how neoliberalism appropriated the feminist movement against sexual violence*. Duke University Press. 2008.

Ritter, Gretchen. *The Constitution as Social Design: gender and civic membership in the American constitutional order*. Stanford University Press, 2006.

Roberts, Dorothy. *Killing the Black Body: race, reproduction, and the meaning of liberty*. Vintage, 1997.

- ***Please turn off your cell phones during lecture; this includes text messaging.***
- ***Please do not walk out of class during the lecture.***
- ***Thank you.***

Course Outline

I. Framing Gender in Law and Politics [weeks 1-4]

A. The Feminist Movement Against Sexual Harassment [Jan. 26]

Baker, (2008) *The Women's Movement Against Sexual Harassment*; Introduction and Part I (pp. 1-64).

Recommended:

Ritter, "The Constitution as Social Design," Chapter 1.

B. "Hostile Environment" as a Violation of Civil Rights

Jan. 31

Baker, Part II (pp. 67-107).

Meritor Savings Bank v. Vinson (1986)

Harris v. Forklift Systems (1993)

Oncala v. Sundowner Offshore Services (1998)

Feb. 2 & 7

Baker, Part III (pp. 111-176).

Vance v. Ball State University (2013)

Holder v. Southeastern Oklahoma State University (2015)

See "**Framing_Harrington_prezi**"

C. Anti-Feminist Counter Mobilization [Feb. 9 no class/snow day, Feb. 14]

Schreiber, (2008) *Righting Feminism*; Chapters 1-3 (pp. 3-55).

Recommended:

Richards, David A. J. *Fundamentalism in American Religion and Law: Obama's challenge to patriarchy's threat to democracy*. NY: Cambridge University Press, 2010.

D. Queer with or without Feminist Legal Theory?

Feb. 14

Halley, "Queer Theory by Men", in Fineman, Jackson & Romero (2009) *Feminist and Queer Legal Theory*; Chapter 1 (pp. 9-28).

Franke, “Theorizing Yes: An Essay on Feminism, Law, and Desire”, in Fineman, Jackson & Romero, Chapter 2 (pp. 29-44).

Feb. 16

Schultz, “The Sanitized Workplace Revisited,” in Fineman, Jackson & Romero, Chapter 4 (pp. 65-90).

Nadig, Alok K. “Able Queer: The ADA as a Tool in LGBT Antidiscrimination Law.” *NYU Law Review*. 91(2016): 1316-1354.

II. Gender Violence [weeks 5-7]

A. If the State is Involved or Not [**Feb. 21, 23 & 28**]

Feb. 21

Siegel, Reva B. “‘The Rule of Love’: Wife Beating as Prerogative and Privacy.” *Yale Law Journal* 105 (1996): 2117- 2161 and 2170-2174.

Corrigan. *Up Against A Wall: Rape Reform and the Failure of Success*, 2013, Chapters 1 & 2.

Feb. 23

Corrigan, Chapters 3, 4, 5 & 6.

Feb. 28

Corrigan, Chapters 7 & 8.

Recommend:

Bumiller, Kristin. *In an Abusive State: how neoliberalism appropriated the feminist movement against sexual violence*. Duke University Press, 2008.

B. Federal Law: *Violence Against Women Act* [**March 2 & 7**]

March 2

Siegel, Reva B. “The Rule of Love,” pp. 2174-2207

Schreiber, Chapter 4 (pp. 56-77).

Recommend:

Mills, Linda G., Mary Helen Maley and Yael Shy. “Circulos de Paz and the Promise of Peace: Restorative Justice Meets Intimate Violence.” *NYU Review of Law & Social Change* 33 (2009):127-152.

March 7

Brzonkala v. Virginia Polytechnic Inst. & State Univ. (1997) USCA, 4th Cir. 2-1

en banc Brzonkala v. Virginia Polytechnic Inst. & State Univ. (1999) USCA, 4th Cir. (1999) 7-4

U.S. v. Morrison (2000) 5-4

See “VAWA_Harrington_prezi”

Mid-Term: **Thursday, March 9th**

Week of Spring Break no class

C. Title IX: Sexual Harassment as Sexual Violence [**March 21, 23 & 28**]

1. Feminist Activists

KNOW YOUR IX, “Pros and Cons of Filing a Title IX Law Suite,” accessed on 10/1/2015 at <http://knowyourix.org/title-ix/pros-and-cons>

KNOW YOUR IX, “Letter to Chair and Ranking Member of the Senate Committee on Health, Education, Labor and Pensions,” February 25, 2016.

National Women’s Law Center, “The Next Generation of Title IX: Harassment and Bullying Based on Sex,” www.nwlc.org

Feminist Majority Foundation, “Feminist Groups Oppose FRATPAC Bill,” September 21, 2015, <https://feminist.org/blog/index.php/2015/09/21/feminist-groups-oppose-fratpac-bill/>

2. Anti-Feminist Activists

Independent Women’s Forum (IWF), “Harvard Tells Its Women: Go Where the Rapes Are,” March 15, 2016, <http://iwf.org/2799605/Harvard-Tells-Its-Women>

IWF, “Title IX and Freedom of Speech on College Campuses,” 6 Policy Focus January 2016.

3. Federal Agencies: Dept. of Justice *and* Dept. of Education

US Department of Justice <http://www.justice.gov/agencies/index-org.html>

Office on Women Against Violence, U.S. Department of Justice <http://www.ovw.usdoj.gov/>

Lhamon, Catherine E., “Questions and Answers on Title IX and Sexual Violence,” Office of Civil Rights, US Department of Education, April 29, 2014.

Office of Civil Rights, US Department of Education, “Know Your Rights: Title IX Prohibits Sexual Harassment and Sexual Violence Where You Go to School,” document on ED website.

4. Due Process Rights

19 Harvard Law School Professors, “Press Release: The Hunting Ground,” November 11, 2015.

A Voice for Make Students, “Database: Lawsuits Against Colleges and Universities Alleging Due Process and Other Violations in Adjudicating Sexual Assault,” downloaded 9/24/2015. www.avoicemalestudents.com

5. Feminist Legal Policy on Title IX

Halley, Janet. “Trading the Megaphone for the Gavel in Title IX Enforcement.” 128 *Harvard Law Review Forum* 128 (2014):103.

Gersen, Jacob and Jeannie Suk. “The Sex Bureaucracy.” *California Law Review* 104 (2016).

See “Title IX_Harrington_prezi”

Recommend:

Schneider, Elizabeth. *Battered Women & Feminist Lawmaking*. New Haven: Yale University Press, 2000.

Hedda Nussbaum v. Joel Steinberg (1999) Supreme Court of NY State Appellate Division

Video: Court TV (1999) *The Trial of Lorena Bobbitt: Assault, Revenge or Self-Defense?*

Independent Women’s Forum (IWF), “Brief of Amicus Curiae in Support of Respondent in *U.S. v. Morrison*,” files with the U.S. Supreme Court on December 13, 1999.

III. Gendered/ Sexed Roles in Law: Marriage

A. Marriage and Motherhood [**March 30 and April 4**]

Fineman, *The Neutered Mother, the Sexual Family*. NY: Routledge, 1995.

Becker, “Care and Feminists,” in Fineman, Jackson & Romero, Chapter 9 (pp. 159-177).

Schreiber, Chapter 5 (pp. 78-95).

Recommend:

Ritter, “Marriage,” Chapter 3.

B. Same Sex Marriage and Law Reform [[April 6, 11 & 13](#)]

Defense of Marriage Act (1996)

Goodridge v. Department of Public Health (2003) Supreme Judicial Court of Massachusetts

Keck, Thomas M. “Beyond Backlash: Assessing the Impact of Judicial Decision on LGBT Right.” *Law & Society Review* 43 (2009): 151-182.

Obergefell v. Hodges (2015)

Schreiber, Epilogue (pp.129-140) focus on “identity politics.”

Recommended:

Yoshino, Kenji. “Covering,” *Yale Law Journal* 111 (2002): 769.

Paper due: [April 10th](#)

IV. Legal Scrutiny for Gendering [[weeks 11-13](#)]

A. Constitutional Equality: Differential Impact

[April 18](#)

Frontiero v. Richardson (1973)

Craig v. Boren (1976)

California Federal Savings and Loan Asso., et al v. Guerra (1987)

[April 20](#)

Crenshaw, Kimberlé. “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics.” *University of Chicago Legal Forum* (1989): 139-167.

Ledbetter v. Goodyear Tire & Rubber Co. (2007)

Recommend: Ritter, “Equality,” Chapter 7

B. Constitutional Liberty: Reproductive Privacy

April 25

Griswold v. Connecticut (1965)

Roe v. Wade (1973)

April 27

Whole Woman's Health v. Hellerstedt (2016)

Recommend:

Planned Parenthood v. Casey (1992)

Thomas, Kendall. "Beyond the Privacy Principle." *Columbia Law Review* 92 (1992): 1431-1516.

Silverstein, Helena. *Girls on the Stand: How Courts Fail Pregnant Minors*. NY: NYU Press, 2007.

V. Regulating Women's Bodies [week 14] May 2 & 4

Cramer, *Pregnant with the Stars*. Stanford: Stanford University Press, 2015.

Recommend:

Harris, Angela P. "Race and Essentialism in Feminist Legal Theory." *Stanford Law Review* 42, no. 3 (1990): 581-616.

Roberts, Dorothy. *Killing the Black Body: race, reproduction, and the meaning of liberty*. Vintage, 1997.

Williams, Patricia J. "On Being the Object of Property." Reprinted (1998): 165-180.

Final Exam: May 11th – Thursday, 10:00-11:50 AM