Course Description

This course examines how gender and law in the United States are used to confer rights, create obligations and define identities. We explore the theoretical, historical and empirical bases for gender in law, and pay particular attention to how and when gender-based laws have changed over time. We analyze the relationship between gender politics, legal theory, legal doctrine and social policy. We also ask whether the gender of legal actors (lawyers, judges and jurors) makes a difference in their reasoning or decision-making.

The first half of the course focuses on the seminal Supreme Court case law dealing with gender issues. Topics include: constitutional equality under the 14th Amendment; workplace equality under Title VII; equality of education under Title IX; and the right to privacy and reproductive rights. In the second half of the course we read several books dealing in depth with issues such as divorce, fetal rights, pornography and women lawyers.

Finally, for those of you planning to attend law school, I believe that reading and analyzing these seminal Supreme Court cases will allow you to begin to understand the “legalese” with which the Supreme Court speaks to its audience and put you in a better position to tackle difficult case law once getting to law school.

Class Format

This class will meet once a week; the class meetings will consist of a combination of case presentations, discussions and student presentations. It is expected that you will have read the reading material prior to each class meeting so that you can actively participate in discussions.

Contacting the Professor

I encourage students to attend my office hours to discuss not only issues arising in this class, but more generally, questions about law school and the practice of law. I am happy to share insights about my own law school experience as well as my experience as a litigator in a big NY City law firm. You should also feel free to e-mail me with questions and concerns. If you cannot make my office hours, please e-mail me to set up an appointment. However, I want to warn students that I check my e-mail and my voice mail very irregularly in the evenings or on weekends so please do not be offended if I do not respond during my off-hours.

Policy on Extensions

If a religious observance will limit you from sticking to the class schedule, you MUST see me at the beginning of the semester. If you want other extensions, please do not ask me if you can have an extension. Instead, follow the policy below.
Excused extensions

There are only two contingencies which are acceptable for the excused postponement of a test or final paper: personal illness or family crisis. If either of these contingencies prevents you from taking an exam or turning in the final paper, you are entitled to an excused extension. The following steps must be taken:

1. PRIOR to the class period in which the work is due or the exam is to be given, you must notify me that you will not be present at the exam or that you cannot submit the assignment. This notification must be made before the actual class begins.

2. You MUST contact me by 5 pm of the following day to arrange when the work will be completed.

3. You MUST submit to me at the time of your make-up exam, or at the time your final paper is submitted, a signed, written statement indicating that you are acting in accord with Wellesley’s Honor Code. The signed statement may be brief and needs only to indicate; (1) that you are requesting an excused extension; (2) that the reason for the extension is consistent with the criteria described above; and (3) that you are acting in accord with Wellesley’s honor code.

Unexcused Extensions

I will assume that any work submitted without a written statement is an unexcused extension, and will be subject to the following penalties:

1. Missed exams must be made up within one week of the date of the exam. The exam will be reduced by a third of a letter grade for each late day (A to A- the first day, A- to B+ the second day, etc). After one week, the student will receive a zero.

2. If you turn the final paper in late, your overall grade on the paper will be docked a third of a letter grade for each day late.

Students with Disabilities

Students with disabilities who are taking this course and who need disability-related accommodations are encouraged to work with Jim Wice, the Director of Disability Services to arrange these accommodations. His office is located in the Pforzheimer Learning & Teaching center in Clapp Library.

Religious Observances

I am, of course, glad to accommodate any student’s need to miss a class because of a religious observance. You must see me at the beginning of the semester so that we can make any necessary arrangements for missed work.

Course Requirements and Grading

The main duty of students in this course is to keep up on the readings and come to class ready to discuss case law in depth and participate in class discussions. The quality of this seminar will depend largely on the your level of preparation and participation.
CLASS ATTENDANCE IS MANDATORY. EACH STUDENT WILL BE PERMITTED ONE UN-
EXCUSED ABSENCE. Students who miss more than one class (without a proper medical excuse) will have 1/3 grade deducted from their final paper. Because this seminar is so dependent on group
discussion – and because it meets only once a week – I have to impose these strict parameters.

Since this class is being fashioned as a legal seminar, I reserve the right to call on students during
discussion of legal cases. I find that this helps to ensure a high level of preparedness. In addition, for
those planning to go to law school, this will be a friendly introduction to a technique that will be far more
terrifying when practiced in a 100-student auditorium class (known as the Socratic Method).

I realize that some students are shy and find it hard to talk in front of a group. If you are shy I urge you
to use this course to help get over your hesitation to speak in public. I don't expect every student to
participate with equal vigor, but I want everyone to make a contribution. I find that when shy students get the
courage to speak up, they often have better, more well-thought out ideas than those students who talk all the time. In any case, don't think that you have to have a brilliant idea to talk in class, and don't worry that you'll be penalized for saying something dumb--you won't. (I say dumb, wrong things all the time, as you'll soon learn.) Class participation grades are based on getting involved in the conversation, not on
the positions you advocate.

Grading is based on four aspects of the course: one mid-term exam (30%); two short memos (15% each);
one 15-page research paper (30% ); and class participation (20%).

The Mid-Term

The first half of the class is almost exclusively devoted to reading Supreme Court cases. I find that
this material is well-suited to being tested through a written exam. The exam will consist of one long
essay in which you are given a hypothetical case and asked to discuss the likely outcome of the case
given the controlling Supreme Court case law we have covered in class. The format for this exam is very
similar to those given in law school, except that it is much shorter (law school exams cover the entire
semester on one test). We will practice a few examples in class the week before the mid-term.

Short Memos and Leading Class Discussions

The short memos are intended to be short position papers. The memos should be no more than three
pages in length. The memo can be about whatever the student wants as long as it relates to the week’s
topics. For instance, you might attach a newspaper or magazine article that you think is related to the
readings and explain the connection. Or you might take issue with something one of the authors or
judicial opinion-writers has said that really angers you.

Each student will choose two weeks at the beginning of the semester – one in the first half of the
semester and one in the second half. The weeks you choose should reflect topics you are interested in
exploring more in depth. On those weeks, the students signed up will not only have to turn in their short
paper, but also, will be responsible for leading class discussion by proposing questions for the entire
class to work through. You may work in groups in developing questions for class discussion if you
would like.

Memos are due at the Political Science Department in my mailbox by 1 pm each Monday. Memos
turned in after 1 pm on Monday will not be counted. Your grade will be based on the memo plus the
quality of the questions you propose to the class.
Long Research Paper

You will also be responsible for writing a 15-page research paper on a topic of your choice related to gender and law. Some suggested topics are: Title IX and the future of women’s college athletics; Title IX and the future of single sex education; the Constitution and same sex marriage; global feminism; violence against women in the United States; the pay equity movement; women in the military; or the revitalization of the Equal Rights Amendment. Students may choose one of these topics or choose their own topic. Students must have their topics approved by the professor. All students will be expected to submit their final choices for topics no later than February 22nd. Papers will be due the last day of finals.

REQUIRED BOOKS AND READINGS

The following books are available for purchase from the college book store or from Amazon.com:


Where indicated, readings are available from the Lexis-Nexis database, the JSTOR database (both available through the library) or on e-reserve for our class conference.

CLASS SESSIONS

Class 1(1/28):

Overview of the Class and Introduction to Reading Constitutional Cases


TOPIC I: Historical Approaches to Gender, Law and the Constitution

Class 2 (2/4):

The 18th and 19th Centuries: Coverture, Married Women’s Property Acts and the Passage of the 14th Amendment

*State v. Hussey*, 44 N.C. 123 (1852)(e-reserve)
State v. Rhodes, 61 N.C. 453 (1868) (e-reserve)
Frazier v. State, 48 Tex. Crim. 142 (1905) (e-reserve)

Baer, pp. 273-274

The Early 20th Century: Substantive Due Process and Early Attempts at Equality
Baer, pp. 11-18, 25-45

Class 3 (2/11)

The Mid-20th Century: Early Approaches to Gender and the Equal Protection Clause, Intermediate Scrutiny

Baer, pp. 46-68, 77-84, 269-271

Class 4 (2/25)

Applying the Intermediate Scrutiny Test

Califano v. Goldfarb (e-reserve)
Califano v. Webster (e-reserve)
Baer, 98-104, 105-115, 510-534

TOPIC II: Statutory Issues

Class 5 (3/3)

Employment Discrimination: Title VII
Baer, pp. 147-183

Video, “Sex and Justice”

Classes 6 (3/10)

Pregnancy and the Equality Crisis
Baer, pp. 183-222

Education: Title IX
Baer, pp. 498-506, 533-554

TOPIC III: Reproductive Rights

Class 7 (3/17)
Abortion
Baer, pp. 352-366, 368-382, 404-430

Class 8 (3/31)

MID-TERM EXAM

Class 9 (4/7)

Fetal Rights Movement
Daniels, pp. 1-148

TOPIC IV: Family Issues

Class 10 (4/14)

Divorce
Fineman book, Chs. 1-4, pp. 1-78

Child Custody
Fineman book, Ch. 5, pp. 79-94
Bottoms v. Bottoms, 457 S.E.2d 102 (e-reserve)
Baer, pp. 282-288

Same Sex Marriage
Baer, pp. 246-261

TOPIC V: Violence Against Women

Class 11 (4/22)(Patriot’s Day class on Tuesday)

Rape
Baer, pp. 592-601

Statutory Rape
Baer, pp. 85-95

Pornography
Dworkin, Andrea, “Against the Male Flood: Censorship, Pornography, and Equality” (e-reserve)
TOPIC VI: Women in the Courtroom

Class 12 (4/28)

Women Lawyers

Guinier, pp. 1-102

Women Judges


Women Jurors


Class 13 (5/5):

Review and Round-up