

Gender and the Law
Merrimack College
Spring 2006

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Office: The Gender Studies Office, Sullivan 308

Office Hours: After class, from 3:30-5:30 or by appointment

Course Description: This course focuses on the gendered aspects of American (and, very briefly, international) law. It explores the history of gender bias in laws and legal decisions. It asks hard questions about what equality looks like and (if and) how the law can achieve it. Specific topics include: employment law, education and athletics, pregnancy, family, rape, sexual harassment, reproductive control, lesbian/gay/transgender legal issues, prostitution, and pornography.

Course Goals: At the end of this course, you will be expected to: 1) Look for the gender implications in a law or set of laws; 2) Be able to discuss the fundamental issues in equality law; 3) Understand basic terms, including the difference between sex and gender; 4) Articulate your feelings about sex equality in the law; 5) Read cases about gender and sex; and 6) Explain different perspectives the proper way to attain gender equality within or outside of the legal system.

Course Policies:

- 1) Accommodation of disabilities: Merrimack College has a process in place to officially recognize the need for accommodation. You can find information about that process on the Merrimack website, or you may ask me, and I will direct you to it. No accommodations will be made outside of this system of recognition.
- 2) Late work: I know there are a lot of deadlines. Nonetheless, I expect you to do work on time, always. If for some reason you cannot make it to class, you may turn your assignment in either in my mailbox or in my email box *before* class. I am generally an understanding person but *not about late papers*. In 23 years of school, I never turned a paper in more than 20 minutes late. My official policy is not quite so draconian, however: a paper may be turned in the day it is due without penalty, the next day for a letter grade off, and the third day for half credit. This includes your final paper.
- 3) This course, by structure and necessity, includes a substantial amount of work with your peers. You will do this courteously and respectfully.
- 4) Class starts at **1:30**. This is half an hour later than you registered for. You will have a half-hour assignment to do in groups of two each week; you may choose to do it from 1 to 1:30, or some other time of your choice. I will expect it when I arrive in the classroom.
- 5) There are **14** meetings of this class scheduled, of which I will be forced to due to pre-existing academic and familial commitments to miss **3**. Those three classes are the classes on **February 1, February 22, and March 22**. The **March 22**

course will still meet; there will be a film to view. We will reschedule one of the two other classes. There will be an assignment in lieu of the other class.

Course Materials:

That is a small conundrum. I did not know that we were going on this journey together until long after your bookstore was done ordering books. We will try not to let that stop us.

The text is Catherine MacKinnon's *Sex Equality* – which I strongly suggest you buy used. The ISBN is: 1566624797. It is hardcover, and more than 1000 pages; do not worry, we will not read all of it. It can be had new for \$92 or used between about \$40 and \$60 at amazon.com, new for \$91.70 and used from \$74.00 at barnesandnoble.com, for \$75 used on ebay, new for \$54 dollars but with a two week wait at ecampus.com, used from \$35 at half.com; \$60 at alibris.com; \$60 on biggerbooks.com. If you have no luck with any of those, it can be bought at Thomson-west.com (the publisher). Make sure on all of these sources to use the ISBN to search.

Note that this is not an undergraduate text (and that there is no available undergraduate text), so it is fine if there are some things that are difficult to understand. I won't expect you to be a law student, and you can ask questions as you need to. Accordingly, the readings may seem short, but will take a lot of time to digest. Have a dictionary around, or use dictionary.law.com.

Grade: Your grade is as follows:

- 30% in-class assignments (the “extra 30 minutes” and “project in lieu of class”)
- 20% class participation
- 25% short paper (5-8 pages analyzing the subject matter of the reading of a week of your choice, due on the last day of class)
- 25% final exam (Question to be distributed in the first month of class, due at the scheduled exam).

January 18 – Introduction

- Questions for thought
- Movie excerpts, *Iron-Jawed Angels*

January 25 – The Meanings of Sex, Gender, and Equality

- **Reading Assignment:**
 - o Emailed definitions of sex and gender from Dr. Sjoberg
 - o *Sex Equality*, 1-24, 43-50, 277 (bottom) – 283 (middle)
- **Extra Half Hour Assignment:**
 - o With your partner, write a paragraph-long answer to two of the following three questions:
 - Are men and women the same?
 - What is a man? What is a woman?
 - I am a hermaphrodite who is attracted to women. I am filling out my tax form. What “sex” box should I check, or should I?
 - o Turn this in to Dr. Sjoberg when she arrives in class. It is not necessary to reference the reading in your answer.

February 1 – (Class to be Rescheduled) – Rape

- **Reading Assignment:**
 - Sexual Assault as Sex Inequality, 766-796 (including Question 2)
 - Consent/Non-Consent, 817-822 (to the end of example 2)
 - Mistaken Belief in Consent, 831-833
 - The Antioch College Policy, 836-837
 - Rape as Sex Discrimination/The Violence Against Women Act 887-894
- **Extra Half Hour Assignment:**
 - With your partner, write a paragraph-long answer to two of the following three questions:
 - Can there be rape within marriage? How would you tell?
 - Catherine MacKinnon, the author of this textbook, is famous for once saying “all heterosexual sex is rape” – what could she have meant by that, and where do you draw the line to define rape?
 - Statutory rape laws say that, as a matter of policy, there are people too young to consent to sex. Are there other situations in which someone cannot consent?
 - Turn this in to Dr. Sjoberg when she arrives in class. It is not necessary to reference the reading in your answer.
- **Food for Thought**
 - Have you ever been involved in a sexual situation where consent was not explicit? Or where less than 100% consent existed, and you knew it? Were you the one who was not sure you wanted to be involved in the situation, or the one with a less-than-totally willing partner? Was there anything wrong with the experience?

February 8 – Pornography and Prostitution

- **Reading Assignment**
 - **Pornography**
 - Introduction, 1506-1512
 - The Harm of Pornography, 1532-1543 (top)
 - Brief of Feminist Anti-Censorship Task Force, 1592-1598 (bottom)
 - **Prostitution**
 - Introduction, 1394-1401
 - Conditions and Preconditions, 1401-1414
 - Prostitution as Sexual Slavery, 1447-1454
- **Extra 30 Minutes Assignment:**
 - With your partner, write a paragraph-long answer to two of the following three questions:
 - Defend the legality of prostitution in women’s interest.
 - Defend the legality of pornography in women’s interest.
 - Is it prostitution when two “consenting” adults make an agreement for one to pay the other’s rent in exchange for sex? What about

when a man supports his wife while she stays at home? What is he “trading” for? Define prostitution.

- Turn this in to Dr. Sjoberg when she arrives in class. It is not necessary to reference the reading in your answer.

February 15 – Pregnancy/Reproductive Control

- **Pregnancy**
 - Introduction, 385-399 (through number five)
 - As Sex Discrimination, 402-407 and numbers 2 & 3 from the notes
- **Reproductive Control**
 - Introduction, 1191-1201
 - Abortion, 1212-1221 (including Roe and Note 1)
 - Roe as a Sex Discrimination Case, Note 7, 1227-28
 - Abortion as a Sex Equality Issue, 1244-1252
- **Extra 30 Minutes Assignment:**
 - With your partner, write a paragraph-long answer to two of the following three questions:
 - Would you vote for a woman who was pro-choice? What about a woman who had an abortion?
 - Is having children something women should get to do and remain equal in the workplace to men and women who don't? Or should they have to weigh the pros and cons?
 - Should medical insurance pay for abortion? Generally? In the case of rape?
 - Turn this in to Dr. Sjoberg when she arrives in class. It is not necessary to reference the reading in your answer.

February 22 – Project in Lieu of Class

- Choose which one of these topics we will not cover in class to read about:
 - Sex and Nation in Conflict, 452-484
 - Sex Harassment in Education, 1000-1039
 - Surrogacy, 1300-1346
 - Marital/Statutory Rape 856-886
 - The Economic Family, 680-714
 - Race Discrimination, 57-85
 - Academic sex segregation, 327-362
- Write a one-page study guide for the issue that you chose to study, and email it to me by Friday.
- I will combine them, and distribute them to the class for their use.

March 1 – Family Law

- **Assigned reading:**
 - Definition of Marriage, 565-570
 - The “illegitimate” family, 577-579

- Working mothers, 630-634 (including number 4)
- Maternal preference, 645-648
- The violent family, 715-742
- **Extra 30 Minutes Assignment:**
 - With your partner, write a paragraph-long answer to two of the following three questions:
 - What is marriage?
 - What is a parent?
 - Should there be mandatory arrest or prosecution in domestic violence cases?
 - Turn this in to Dr. Sjoberg when she arrives in class. It is not necessary to reference the reading in your answer.

March 8 - Lesbian, Gay, and Transgender Issues

- **Assigned Reading:**
 - Introduction, 1057-1066
 - Privacy, 1085-1090
 - The military closet, 1102-1103
 - Sex Discrimination, 1145-1155
 - Distributed supplement
- **Extra 30 Minutes Assignment:**
 - With your partner, write a paragraph-long answer to two of the following three questions:
 - Is “gay” a gender? Transgender? What does it mean to be a man or a woman? Neither? Both?
 - What is the gay community’s problem with “Don’t Ask, Don’t Tell” as a policy?
 - What if any part of who you sleep with is public business?
 - Turn this in to Dr. Sjoberg when she arrives in class. It is not necessary to reference the reading in your answer.

March 15 – Spring Break

March 22 – Movie

- Boys Don’t Cry
- Write a 1 page response to the movie

March 29 – Revisit the Meanings of Sex, Gender, and Equality

- Assigned reading:
 - Sex classifications, 210-215
 - Sex equality, 215-247
- **Extra 30 Minutes Assignment:**
 - Alone, write a paragraph-long answer to two of the following three questions:
 - What gender are you? What does it mean to you?

- What would a world without gender discrimination look like?
 - What do you think the best strategy for detecting gender inequality?
- Turn this in to Dr. Sjoberg when she arrives in class. It is not necessary to reference the reading in your answer.

April 5, 12 – Employment Law, Sexual Harrassment

- **Assigned Reading:**
 - Work, 145-157
 - Price Waterhouse v. Hopkins, 165-168
 - Pay Equity, 176-197
 - Equal Opportunity, 198-209
- **Extra 30 Minutes Assignment:**
 - Prepare a one-minute speech for either the plaintiff or the defendant in *Price Waterhouse*. Give it in class on April 12.

April 19 – Monday Schedule

April 26 – The Standards for Judging

- **Assigned Reading**
 - Burdens of Proof, 489-533
- **No Extra 30 Minutes Assignment: Too Much Reading**

May 3 – What of Gender and the Law?

- Reading distributed by Professor