GIL\_2019.**04**

MW 3:30-4:45

Silver, room 414

**GENDER IN LAW**

POL-UA 336

Fall 2019

Professor Christine B. Harrington Course Assistant: Zachary I. Easterling

*Office hours*: Tuesday 3:00-5:00 *Office hours:* Thursday 1:30-3:30

Department of Politics Department of Politics

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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, statutory, administrative, family, and criminal), such as employment, education, marriage, and sexuality. We also consider how law regulates our bodies in the arenas of privacy rights and reproductive health.

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 by social movements, law, and legal institutions. The full meaning of this sentence will become clear(er) as you learn the legal language, key concepts, analytical approaches, and normative arguments which constitute this field.

**Assignments**

Reading assignments are listed below in topical order. **You need to read** the required material before class, be prepared with notes, case briefs, and questions you have about the readings and/or lectures. Specifically, when we are working with judicial opinions, be prepared to discuss the relevant facts, points of disagreement between the parties (*appellant v. appellee*), the scope of the conflict between the parties, and the judicial reasoning put forth by the majority and dissent.

The quantity of reading for this course is not much when compared to the amount of time you need to set aside for studying and thinking about the material. You are also encouraged to check out recommended readings, mentioned in the lectures and posted on *NYU Classes*. These readings are included to: 1) provide background material; and 2) deepen your understanding of the cultural, social, economic and political roles law and legal institutions perform in the field of gender politics.

**Participation in class discussion** is important not only for the final evaluation of your work, but it is one way of learning, understanding and practicing legal language and political concepts. For example, be prepared to discuss relevant case-facts, points of disagreement between the parties (*appellant v. appellee*), as well as the nature of the dispute, the scope of conflict between parties and justices (majority and dissent).

There are no specific **perquisites** for this course. However, please note that most students who tend to take this course are juniors and seniors, with fewer sophomores. It is not recommended for first year college students unless you have a particular reason for taking it this semester.

Your **feedback** is important throughout the semester, particularly with regard to the pace of the lectures and the quality of class discussions. All changes to the daily schedule of assignments listed below will appear on an updated version of the syllabus posted on *NYU Classes*. It is your responsibility to **keep up** with announcements, as well as attend classes.

Finally, we are fortunate to have the assistance of the **NYU Undergraduate Writing Tutors Program**. Writing tutors are curious, well-trained peers who provide feedback on your drafts of the two writing assignments (see below for more information about the assignments, under “Evaluations and Grades”).

* Their role is to encourage and challenge students to strengthen their writing and clarify their ideas. Writing tutors are trained to support the aims of the class, learning about the expectations for writing in the class and listening and responding carefully to individual student writers.
* Writing tutors are not Teaching / Course Assistants, nor will they grade your assignments. You will **meet with the Writing Tutors twice** over the semester for the purpose of developing clearer writing and stronger thinking skills.
* Writing tutors will look for patterns of grammatical error in your drafts, explain how you can learn to correct these errors. Their main goals are to help you further develop your writing and thinking in response to particular assignments and to become better writers over the long term.
* While the Writing Tutors will audit some lectures and read relevant course materials, their primary skill is to apply what is called a “practice-based approach to writing and revising.” This means that they will ask you questions about your writing, prompt you to reread, rethink, revise, and craft new writing during conferences.
* You are required to participate in the program for each designated paper assignment, submit a draft of your assignment *on time* for written feedback, and attend 2-scheduled, one-on-one conferences (each approx. 30-minutes in length). Writing tutors must receive complete drafts from students, *not outlines or rough notes*. Late submission of drafts to tutors and missed conferences are reported to the Professor, who may reduce a student’s final grade as a consequence.
* You will be working with **Professor Leah Souffrant**, Writing Tutors Faculty Mentor, [ljs17@nyu.edu](mailto:ljs17@nyu.edu) and the following Undergraduate Writing Tutors:

Sammi Baruch, [shb376@nyu.edu](mailto:shb376@nyu.edu)

Srey Dasgupta, [sd3182@nyu.edu](mailto:sd3182@nyu.edu)

Daniella Presti, [dnp282@nyu.edu](mailto:dnp282@nyu.edu)

Anu Raghunathan, [ar4914@nyu.edu](mailto:ar4914@nyu.edu)

Kristen Weatherly, [kdw311@nyu.edu](mailto:kdw311@nyu.edu)

Lucy Yetman-Michaelson, [sym269@nyu.edu](mailto:sym269@nyu.edu)

**Evaluation and Grades**:

1. 5% is based on a Writing Exercise (500- 600 words) “Interpreting Judicial Opinions.”

* Sept. 13 (Friday)\_\_ prompt posted on *NYU Classes*/Assignments;
* Sept. 20 (Friday)\_\_ submit your draft no later than noon time;
* Sept. 23-26\_\_ you will meet with NYU Writing Tutors at the Writing Center (411 Lafayette); and
* Oct. 1 (Tuesday)\_\_submit your final version no later than noon time.

1. 25% is based on an in-class Midterm Exam, consisting of 2 essay questions and 4 short identifications; Monday, Oct. 21
2. 20% is based on a Critical Essay (1,500 words).

* Nov. 8 (Friday)\_\_ prompt posted on *NYU Classes*/Assignments;
* Nov. 15 (Friday)\_\_ submit your draft no later than noon time;
* Nov. 18-21\_\_ you will meet with NYU Writing Tutors at the Writing Center (411 Lafayette); and
* Nov. 25 (Monday)\_\_ submit your final version no later than noon time.

1. 50% is based on a comprehensive, in-class Final Exam: date to be scheduled during finals week: Dec 16-20.
2. Finally, the *quality* of your participation in class discussions is also a factor in determining your course grade. While a specific numbers of points is not tied to class participation, in the end attendance and engagement in discussion weigh into your course grade.

**Communications:** We encourage you to **take advantage of office hours** where one-on-one, or small-group discussions of issues or questions related to the course are meant to both answer questions and deepen your knowledge/interest in the course. Email is NOT an effective substitute for face-to-face conversations.

**Academic Integrity**: Work you submit should be your own. Please consult the CAS academic integrity policy for more information <https://cas.nyu.edu/content/nyu-as/cas/academic-integrity.html> Penalties for violations of academic integrity may include failure of the course, suspension from the University, or even expulsion.

**Reasonable Accommodations for Students with Disabilities:** Academic accommodations are available to any student with a chronic, psychological, visual, mobility, learning disability, or is deaf or hard of hearing. Please register with the NYU's Henry and Lucy Moses Center for Students with Disabilities located at 726 Broadway, 2nd Floor, NY, NY; phone 212-998-4980; Voice/TTY Fax: 212-995-4114; Web site: [www.nyu.edu/csd](http://www.nyu.edu/csd)

*After* you register with the Moses Center, they will contact Professor Harrington.

**Religious Observance:** As a nonsectarian, inclusive institution, NYU policy permits members of any religious group to absent themselves from classes without penalty when required for compliance with their religious obligations. The policy and principles to be followed by students and faculty may be found here: <http://www.nyu.edu/about/policies-guidelines-compliance/policies-and-guidelines/university-calendar-policy-on-religious-holidays.html>

**Required Reading\***

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

Cameron, Deborah. 2019. *Feminism: A Brief Introduction to the Ideas, Debates & Politics of the Movement*. Chicago: University of Chicago Press.

Gerstmann, Evan. 2019. *Campus Sexual Assault: Constitutional Rights and Fundamental Fairness*. Cambridge: Cambridge University Press.

Halberstam, Jack. 2018. *Trans\*: A Quick and Quirky Account of Gender Variability*. Oakland, CA: University of California Press.

Halley, Janet, Prabha Kotiswaran, Rachel Rebouche, and Hila Shamir, eds. 2018. *Governance Feminism: An Introduction*. Minneapolis MN: University of Minnesota Press.

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

* *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**

Introduction to the courseSept. 4

**I. Framing Gender in Law and Politics**

1. The Feminist Movement Against Sexual Harassment [2 weeks]

Sept. 9 & 11

* Baker, Carrie N. 2008. Introduction and Part I. “Raising the Issue of Sexual Harassment.” In *The Women’s Movement Against Sexual Harassment*. Cambridge: Cambridge University Press, pp. 1-64.
* Cameron, Deborah. 2019. Introduction. “What is Feminism?” In *Feminism:* *A Brief Introduction to the Ideas, Debates & Politics of the Movement*. Chicago: University of Chicago Press. 1-12.

**\*\*Sept. 13\_** **Prompt for Writing Exercise**

Sept. 16 & 18

* Baker, Part II. “Growth of a Movement Against Sexual Harassment,” pp. 67-107.
* NYC, Human Resources Administration, Dept. of Social Services. “Battered Women’s Movement 1950-2005.
* Cameron, Chapter 1. “Domination” and Chapter 2. “Rights,” pp. 13-44.
* National Center on Domestic & Sexual Violence. “Power and Control Wheel.”

**B.** Making Public Policy [2 weeks]

**1**. Employment Discrimination and Title VII

Sept. 23 & 25

* Baker, Part III. “The Movement’s Influence on Public Policy,” pp. 111-176.
* Cameron, Chapter 3. “Work,” pp. 45-49.
* *Meritor Savings Bank v. Vinson* (1986) 9-0, CJ Rehnquist
* *Harris v. Forklift Systems* (1993) 5-4, O’Connor
* *Oncale v. Sundowner Offshore Services* (1998) 9-0, Scalia
* *Vance v. Ball State University* (2013) 5-4, Alito
* See “Framing\_Harrington\_prezi”

**\*\*Writing Exercise Due \_ Oct. 1**

**2**. Education Discrimination and Title IX

Sept. 30 & Oct. 2

* *Gove City v. Bell* (1984) 7-2, White
* Dept. of Education, Office of Civil Rights (2011) “Dear Colleague Letter.”
* Gerstmann, Evan. 2019. Introduction and Part I. In “The Need for Due Process.”In *Campus Sexual Assault: Constitutional Rights and Fundamental Fairness*. Cambridge: Cambridge University Press, pp. 1-79.
* Gerstmann, Part II. “What Process is Due,” pp. 83-138.
* Cameron, Chapter 5. “Sex,” pp. 75-91.
* See “Title IX*\_Harrington\_*Prezi”

**II. Political Values Embedded within Legal Theories** [1 week]

Oct. 7

* Halley, Janet. 2018. “Where in the Legal Order Have Feminists Gained Inclusion?” In *Governance Feminism: An Introduction*, eds. J. Halley, P. Kotiswaran, R. Rebouche, & H. Shamir. Minneapolis MN: University of Minnesota Press, pp. 3-23.
* Halley, Chapter 2. “Which Forms of Feminism Have Gained Inclusion?” pp. 23-54.
* Halberstam, Jack. 2018. Preface and Chapters 1 and 2. In *Trans\*: A Quick and Quirky Account of Gender Variability*. Oakland, CA: University of California Press, pp. xi-44.

Oct. 9

* Cameron, Chapter 4. “Femininity,” pp. 60-74.
* Cameron, Chapter 6. “Culture,” pp. 92-106.
* Halberstam, Chapters 4, 5 and 6, pp. 63-128.
* Becker, Mary. 2009. “Care and Feminists.” In *Feminist and Queer Legal Theory: Intimate Encounters, Uncomfortable Conversations*, eds. M. Fineman, J. Jackson & A. Romero. UK: Ashgate, pp. 159-177.
* Schreiber, Ronnee. 2008. Chapters 1-3. In *Righting Feminism*: Conservative *Women & American Politics*. NY: Oxford University Press, pp. 3-55.

*Recommended*:

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

Richards, David A. J. *Fundamentalism in American Religion and Law.* NY: Cambridge University Press, 2010

**\* No Class Monday, Oct. 14\_\_ Fall Recess**

**III. Gender Violence** **and the Politics of** **Governing Consent** [1 week]

**A.** How is the “State” Involved or Not Involved?

Oct. 15

* Siegel, Reva B. 1996. “‘The Rule of Love’: Wife Beating as Prerogative and Privacy.” *Yale Law Journal* 105: 2117- 2161.
* Kotiswaran, Prabha. 2018. “Governance Feminism in the Postcolony: Reforming India’s Rape Laws.” In *Governance Feminism*, pp. 75-148.

*Recommended*:

*Private Violence* (film) Bobst Film.

*Schneider, Elizabeth.* 1999. “Amicus Brief for Plaintiff \_*Hedda Nussbaum v. Joel Steinberg.*” NY State Appellate Division.

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

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

Shamir, Hila. 2018. “Anti-trafficking in Israel: Neo-abolitionist Feminists, Markets, Borders, and the State.” In *Governance Feminism*, pp. 149-201.

**B.** Who Governs Gender-Motivated Violence?

Oct. 16

* Siegel, pp. 2174-2207.
* *U.S. v. Morrison* (2000) 5-4, CJ Rehnquist
* Harrington, Christine B. 2019. “Administrative ‘States’ of Judicial Policy on Gender-Motivated Violence.” In *The Legal Process and the Promise of Justice*, eds. R. Greenspan, H. Aviram, & J. Simon. Cambridge: Cambridge University Press, pp. 230-258.
* Harrington “VAWA \_ Prezi”

*Recommended*:

“Temporary Restraining Order,” 1997.

Helms, Lelia and Selden Biggs. 2008. “Policy Mapping: A New Framework for Teaching Policymaking and Policy Design through Case Studies.” *Journal of Public Affairs Education* 13: 565-584.

Solicitor General of the U.S., Seth P. Waxman. 1999. “Reply Brief, *U.S. v. Morrison*.”

Independent Women’s Forum. 1999. “Amicus Curiae Brief Supporting Respondent in *U.S. v. Morrison*.”

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

**\*\* Mid-Term Exam: Monday, Oct. 21**

**IV. Legal Scrutiny for Gendering**

1. Constitutional Equality: Differential Treatment & Differential Impact [1.5 weeks]

Oct. 23

* *Reed v. Reed* (1971) 9-0, CJ Burger
* *Frontiero v. Richardson* (1973) 7-1, Brennan
* *Craig v. Boren* (1976) 7-2, Brennan

Oct. 28 & 30

* Crenshaw, Kimberlé. 1989. “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.
* *California Federal Savings and Loan Asso., et al v. Guerra* (1987) 6-3, Marshall
* *Ledbetter v. Goodyear Tire & Rubber Co.* (2007) 5-4, Alito

**\*\*Nov. 1\_\_ Prompt for Critical Essay**

1. Constitutional Liberty: Religious Morality/Discrimination [2.5 weeks]

Nov. 4, 6 & 11

* *Gaylord v. Tacoma School District* (1977) Supreme Court, State of Washington
* *Bowers v. Hardwick* (1986) 5-4, White
* *Lawrence v. Texas* (2003) 6-3, Kennedy
* Gerstmann, Chapter 6. “Sexual Assault and Affirmative Consent,” pp. 141-162 and Chapter 7. “Affirmative Consent and the Constitution,” pp. 163-186.

*Recommended*:

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

Yoshino, Kenji. “Covering.” *Yale Law Journal* 111 (2002): 769-939.

Nov. 13 & 18

* *Goodridge v. Dept. Public Health* (2003) Supreme Judicial Court of Massachusetts
* Listen to the oral argument before SCOTUS, *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, December 5, 2017, [www.oyez.org/cases/2017/16-111](http://www.oyez.org/cases/2017/16-111)
* *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission* (2018) 7-2, Kennedy

*Recommended*:

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

**\*\*Critical Essay due: Monday, November 25**

\_\_\_\_\_Thanksgiving Recess\_\_ Nov. 27 - Dec. 1

**V. Regulating Our Bodies Ourselves** [3 weeks]

**A.** Reproductive Equal Liberty

Nov. 20 & 25

* *Muller v. Oregon* (1908) 9-0 Brewer
* *Griswold v. Connecticut* (1965) 7-2, Douglas
* Halberstam, Conclusions, pp. 129-138.

Dec. 2 & 4

* *Roe v. Wade* (1973) 7-2, Blackmun
* *Harris v. McRae* (1980) 5-4, Stewart
* *Planned Parenthood v. Casey* (1992) 5-4, O’Connor

Dec. 9 & 11

* *Burwell v. Hobby Lobby Stores* (2014) 5-4, Kennedy
* *Whole Woman’s Health v. Hellerstedt* (2016) 5-3, Breyer
* *Box (Indiana Dept. Health) v. Planned Parenthood of Indiana and Kentucky* (2019) per curiam

*Recommended*:

Williams, Patricia J. 1988. “On Being the Object of Property.” *Signs* 14: 4-24.

Harris, Angela P. 1990. “Race and Essentialism in Feminist Legal Theory.” *Stanford Law Review* 42: 581-616.

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

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

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

Joshua Wilson, Joshua. 2016. *The News States of Abortion Politics*. Stanford: Stanford University Press.

**Final Exam:** TBA