

WOMEN AND GENDER STUDIES 3300/ POLITICAL SCIENCE 3301  
Gender, Sexuality and U.S. Law

M, W, F 10-10:50 AM  
Humanities, Room 1B80  
Fall 2010

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Office Hours: M 11 AM to 12 PM, W 1:30 PM to 2:30  
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Within the context of American national politics, courts play a special role in enforcing checks and balances among the executive, legislative and judicial branches - stepping in when the court believes that one of the branches is overstepping its constitutional role. Federal courts also act aggressively when confronted with state laws that may conflict with individual rights guaranteed either by the U.S. Constitution or by federal laws. American courts have frequently been asked to scrutinize public policies on gender and sexuality in light of constitutional guarantees of privacy, equal protection, and due process under the law. Individual challenges have arisen on questions as varied as women's right to practice law or end a pregnancy, married couples' access to advice about contraception, the definition of marriage, and whether sex that does not result in reproduction can be criminalized.

This course presents both historic and contemporary perspectives on the way U.S. courts have handled these and related issues. Beginning with the constitutional right to privacy - using court cases as well as secondary analyses - we look at how contraception, reproduction, abortion, and sexual orientation are treated within American law. We will then examine the extent to which the equal protection and due process clauses in the Constitution protect Americans from discrimination based on gender in areas of life including work and family life.

During the first weeks of the semester, along with our consideration of how women and men, gay and straight, are treated under the law, we will look more generally at how the U.S. Supreme Court as the ultimate policy-making court in the nation operates to resolve conflict. We use the experience of former Justice Harry Blackmun to lead us through the politics and controversies surrounding the Supreme Court's handling of gender and sexuality.

### Requirements

Since the course combines short lectures, guided discussions, and close questioning on legal cases, **it is important that students complete assigned reading and prepare case briefs if applicable prior to attending class.** On two or three occasions during the semester I will collect and review briefing notes on selected cases, so please bring notes to classes in which cases are to be discussed. There will also be several opportunities throughout the semester to earn extra credit by signing up for short presentations on cases examined. [These opportunities will be announced in class.] Since class participation represents one fifth of the total grade for the semester, it is especially important not to fall behind.

There will be three examinations on course material, two exams of 50 minutes each and a cumulative final examination held on Saturday, December 11 in Humanities 1B80. The distribution of points for the final course grade is as follows:

Class Participation	20 points
Briefing Note Reviews	5 points
First Examination	20 points
Second Examination	20 points
Final Examination	35 points
Extra Credit Opportunities	up to 5 points

### Important Information

#### **Honor Code**

Every student at the University of Colorado at Boulder is responsible for following the campus's honor code (Code), which can be read at <http://www.colorado.edu/policies/honor.html>. The Code seeks to uphold academic integrity by forbidding cheating, plagiarism, academic dishonesty, bribery, threatening behavior, and dishonesty. Any suspected violation of this policy will be reported to the Honor Code Council at [honor@colorado.edu](mailto:honor@colorado.edu). If you have questions about

appropriate rules for citation and use of other researchers' work, or other academic issues covered by the Code, you are encouraged to discuss them with the instructor.

### **Requesting Accommodations**

The campus office of Disability Services ([www.colorado.edu/disabilityservices](http://www.colorado.edu/disabilityservices)) is available to assist students who need extra time to complete examinations or require other accommodations for disabling conditions. If you need such consideration, please request that Disability Services notify the instructor in writing in a timely manner about your needs.

Campus policy instructs faculty to make every effort to adjust course schedules and deadlines to accommodate religious obligations. If scheduled examinations, assignments, or required attendance for this class conflict with religious observances, please inform me during the first two weeks of the class and I will work hard to provide you with a suitable alternative.

### **Nondiscrimination**

Open dialogue and learning can only take place in an environment free from intimidation and harassment. If you witness or experience discriminatory or harassing behavior at the University of Colorado, Boulder, please contact either the Office of Discrimination and Harassment at 303-492-2127 or the Office of Judicial Affairs at 303-492-5550. Information about what constitutes discrimination and/or harassment is provided at <http://www.colorado.edu/odh>.

### **Books to Purchase and Additional Suggested Sources**

**The following books are required reading for this course.** They can be purchased through the CU bookstore or the Colorado Bookstore on the Hill:

Linda Greenhouse, Becoming Justice Blackmun: Harry Blackmun's Supreme Court Journey, Times Books, 2005.

Judith A. Baer and Leslie Friedman Goldstein, The Constitutional and Legal Rights of Women: Cases in Law and Social Change, 3<sup>rd</sup> ed., Roxbury Publishing, 2006.

Particularly if this is the first course that you have ever taken reading legal cases, it will be useful to visit these sites to find definitions of American legal terms that you might not be familiar with:

<http://dictionary.law.com/>

<http://definitions.uslegal.com/about.php>

The following websites provide very useful information on a variety of legal topics ranging from U.S. Court procedures to specific Supreme Court cases:

[www.oyez.org](http://www.oyez.org) - an inside look at the offices of the current Justices on the U.S. Supreme Court. At this site you can hear the oral arguments before the court and even see pictures of contemporary and historic justices.

[www.lamdalegal.org](http://www.lamdalegal.org) - this is the premier website tracking legal cases and controversies from all levels of government concerning sexual orientation. It is updated frequently.

[www.law.cornell.edu/supct/index.html](http://www.law.cornell.edu/supct/index.html) - this is one of the easiest free web-sites on which to find Supreme Court and other judicial opinions.

[www.scotusblog.com](http://www.scotusblog.com) - official Supreme Court blog.

[www.supremecourt.gov](http://www.supremecourt.gov) - official Supreme Court website.

[www.uscourts.gov/links.html](http://www.uscourts.gov/links.html) - this is the official site for finding decisions and information about all levels of federal courts.

## COURSE OUTLINE

### I. United States Supreme Court

#### A. The American 'Policy' Court

- August 23** Discussion of the course, the Supreme Court, policy-making, and meanings of sex and gender.
- August 25** Who Harry Blackmun is. Read and be ready to discuss chapter 1 (pages 1-19) in Becoming Justice Blackmun: Harry Blackmun's Supreme Court Journey [afterwards referred to as Blackmun].
- August 27** Preparing to be a Supreme Court justice. Read chapter 2 in Blackmun (20-41).
- August 30** Life as a member of the Burger court. Read chapter 3 in Blackmun (42-71).

#### B. Privacy and Controversy in America

##### 1. Constitutional privacy prior to Roe

- September 1** Read pages 343-52 in The Constitutional and Legal Rights of Women: Cases in Law and Social Change [afterwards referred to as Rights of Women].
- September 3** Contraception. Read pages 352-67 in Rights of Women.
- September 6** **LABOR DAY – no class**
- September 8** Roe v. Wade. Read pages 368-82 in Rights of Women.

##### 2. Restrictions on abortion after Roe

- September 10** Narrowing the 'right' to an abortion. Read pages 382-91 in Rights of Women.
- September 13** Blackmun's road to Roe. Read chapter 4 in Blackmun (72-101).
- September 15** In defense of Roe v Wade. Read chapter 5 in Blackmun (102-21).
- September 17** Moving toward reversing Roe? Read pages 391-404 in Rights of Women.
- September 20** Blackmun v. Burger. Read chapter 6 in Blackmun (122-52).
- September 22** Planned Parenthood v. Casey. Read pages 404-31 in Rights of Women.
- September 24** Blackmun dissents. Read chapter 7 in Blackmun (153-81).
- September 27** Saving Roe. Read chapter 8 in Blackmun (182-206).

- September 29** **First exam. Bring a blue book.**

##### 3. Sexual orientation and privacy

- October 1** *There will be the following assignment, but no class today.* Begin reading Bowers v. Hardwick (1986) An easy place where you can locate the complete text of this opinion is: [www.law.cornell.edu/supct/index.html](http://www.law.cornell.edu/supct/index.html). After you have reached the web-site go to 'Party' in the left column and select 'historic' as the subhead under party. Then, go to 'B' and look for Bowers v. Hardwick.
- October 4** Finish reading Bowers v. Hardwick.

**October 6** Start reading Lawrence v. Texas (2003). Go the Cornell web-site as explained in the October 1 instruction, but after reaching 'Party' in the left column select '1990 to present,' then go to 'L' and look for Lawrence v. Texas.

**October 8** Finish reading the majority opinion in Lawrence v. Texas.

**October 11** Finish reading the dissenting opinions in Lawrence v. Texas.

**October 13** Precursors to same-sex marriage: Kowalski cases and civil unions/domestic partnerships. Read pages 241-6 and 261-4 in Rights of Women.

**October 15** Legalizing same-sex marriage. Read pages 246-61 in Rights of Women.

## II. American gender justice and the Fifth and Fourteenth Amendments

### A. Sex and Gender before Reed v. Reed (1971)

**October 18** Testing the clauses. Read pages 11-23 in Rights of Women.

**October 20** Breaking the hold of substantive due process. Read pages 23-34 in Rights of Women.

**October 22** Women workers. Read pages 34-45 in Rights of Women.

**October 25** Women citizens. Read pages 46-57 in Rights of Women.

### B. Creating a New Legal Standard – the Middle Tier

**October 27** Breakthrough. Read pages 58-68 in Rights of Women.

**October 29** Protecting women? Read pages 68-77 in Rights of Women.

**November 1** New standard. Read pages 77-84 in Rights of Women.

**November 3** Developing the standard. Read pages 85-104 in Rights of Women.

**November 5** Read pages 104-116 in Rights of Women.

**November 8** **Second exam.** *Bring a blue book.*

## III. How employment law treats gender and sexuality

**November 10** Equal Pay Act and Title VII. Read pages 139-141 in Rights of Women.

**November 12** Read pages 141-147 in Rights of Women.

**November 15** Title VII and sexual harassment. Read pages 150-159 in Rights of Women.

**November 17** Same-sex harassment. Read pages 159-166 in Rights of Women.

**November 19** Gender stereotyping and BFOQ. Read pages 167-183 in Rights of Women.

**November 22-26** **Fall break and Thanksgiving**

**November 29** Mothers in the workforce. Read pages 183-197 in Rights of Women.

**December 1** Pregnancy and benefits. Read pages 197-210 in Rights of Women.

- December 3** Protective laws for pregnant workers. Read pages 210-222 in Rights of Women.
- December 5** Affirmative action. Read pages 222-238 in Rights of Women.
- December 8** Stimulating legal change. Lilly Ledbetter v. Goodyear Tire and Rubber Co. (2007). Go to the Cornell website as explained in the October 1 instruction, but after reaching 'Party' in the left column select '1990 to present,' then go to 'L' and look for Ledbetter v. Goodyear Tire and Rubber.
- December 10** Final exam review.
- December 11** **FINAL EXAM** on Saturday from 4:30 to 7 PM in Humanities 1B80. *Bring bluebooks.*