

Sexuality, Gender & the Law



This course will introduce you to current topics and analytical problems in the law that governs sexuality and gender. The course is divided into three parts: *consent*, *privacy*, and *equality*. These three themes predominate in the legal conversations affecting women, trans constituencies and sexuality minorities. All too often, arguments drawing on one or more of these themes are offered uncritically. We will bring an array of feminist, queer and critical race tools to bear on the usual cache of arguments in order to illuminate their limits and contradictions. We will read both legal and theoretical materials and expand the array of arguments with which you have a working familiarity.

There are no books to purchase for the class; all readings are posted on Blackboard. Participation in class discussion is required and will account for 25% of your grade. Students also will write three papers (5-10 pages each, for a total of about 20 pages by the end of the semester), one at the end of each major unit, and will discuss their thoughts with the group. A paper should take up a topic of personal interest, involve some legal research and analysis, and employ theoretic insights gained from our reading. Each paper will count for 25% of your grade.



INTRODUCTION

Class 1 Consent, Privacy, and Equality in the bathroom

- Boston Globe column on Act Relative to Gender Identity and Expression
- The statute: An Act Relative to Gender Identity and Expression
- Pending legislation: Public Accommodations
- MTPC on public accommodations
- MA Family on bathroom bill
- *Cruzan v. Special School Dist.* (2002)

CONSENT

Class 2 Yale case

- Yale Daily News: Enough Alcohol to Call It Rape?
- Douglas Husak and George Thomas: Date Rape, Social Convention, and Reasonable Mistakes

Class 3 Structuralist ideas about consent

- Catharine MacKinnon: Feminism, Marxism, Method and the State
- Andrea Dworkin: Intercourse
- Anthony Farley: The Black Body as Fetish Object
- Kimberlé Crenshaw: Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color

Class 4 Meanings of Consent (I)

- Duncan Kennedy: Sexy Dressing
- AP report: Musharraf Reforms Rape Law in Pakistan
- SUNY Affirmative Consent Policy
- Chronicle Higher Ed on Affirmative Consent
- Janet Halley: The Move to Affirmative Consent

Class 5 Meanings of Consent (II)

- Martha Chamallas: Consent, Equality, and the Legal Control of Sexual Conduct
- Donald Dripps: Beyond Rape

Class 6 Pro-Sex feminism

- Judith Butler: Gender Trouble
- Bat-Ami Bar On: Feminism and Sadomasochism
- Pat Califia: Feminism and Sadomasochism
- Duncan Kennedy: Sexy Dressing
- Katherine Franke: Theorizing Yes

Class 7 GUEST LECTURER, Sex Work and Trafficking

Reading TBA

Class 8 Minors and Consent

- Fran Olsen: Statutory Rape: A Feminist Critique of Rights Analysis

- Maureen Carroll: Transgender Youth, Adolescent Decision-Making and *Roper v. Simmons*.

Class 9 Student presentations

PRIVACY

Class 10 The Private Family

- *McGuire v. McGuire* (Neb., 1953)
- Fran Olsen: The Myth of Non-Intervention in the Family
- Libby Adler: The Meanings of Permanence

Class 11 Sodomy

- *Lawrence v. TX* (2003)
- Jed Rubenfeld: The Right of Privacy
- Kendall Thomas: Beyond the Privacy Principle

Class 12 Public Sex

- John D'Emilio: My Changing Sex Life
- *Stouman v. Reilly* (CA, 1951)
- Pat Califia: Public Sex

Class 13 Reproduction and Punishment

- NYT: Purvi Patel Could Be Just the Beginning
- Peter J. Cohen, "*Crack Babies*" and the Constitution – Testing Pregnant Women for Illegal Drugs
- Dorothy Roberts: Punishing Drug Addicts Who Have Babies

Class 14 Abortion

- *Whole Women's Health v. Cole* (5th Cir. 2015)
- Aziza Ahmed: Medical Evidence and Expertise in Abortion Jurisprudence

Class 15 GUEST LECTURER, Markets in Sperm & Eggs

Reading TBA

Class 22 Identity as Resistance/Identity as Power

- Janet Halley: Identity Imitation
- Kenji Yoshino: Covering
- Rich Ford: Reluctant Critique of Identity Politics
- Aziza Ahmed: When Men Are Harmed: Feminism, Queer Theory, and Torture at Abu Ghraib

Class 23 Materialism and Identity

- Richard Posner: Sex and Reason
- John D'Emilio: Capitalism and Gay Identity

Class 24 Discursive Production of Identity

- *Estate of Gardiner* (Kan. 2002)
- Michel Foucault: History of Sexuality, Vol.1
- Judith Butler: Gender Trouble
- Dean Spade: Resisting Medicine, Remodeling Gender

Class 25 Gender Identity and Distribution

- Caster Semenya scrapbook
- Shannon Minter: Do Transsexuals Dream of Gay Rights?
- BBC video: Third Gender in Pakistan
- Dean Spade: Documenting Gender

Class 26 Student presentations

Class 27 wrap-up