Women, Gender and Law: The Struggle for Gender Equality and Civil Rights
Universities at Shady Grove (UMBC/Shady Grove: Political Science 338; UMD/College Park: GVPT439W/Section SG91)
Fall Semester 2016
Mondays, 3:00 – 5:30pm
Fourteen classes from September 12, 2016 – December 12, 2016
Final exam: December 19, 3:00 – 5:00pm
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COURSE DESCRIPTION AND SYLLABUS

COURSE DESCRIPTION

The course examines the struggle in America for gender equality and civil rights by looking at landmark U.S. Supreme Court cases. While most of the cases came out of the women’s rights movement, these cases have had broad impact across gender, race, and ethnic divides in American society. The course explores the historical, legal, and social contexts of the key cases and investigates the legal reasoning and constitutional bases of arguments that supported the Court’s decisions, as well as those which opposed the Court’s decisions. The course also looks forward at emerging, new issues in gender equality that might ultimately find their way to the Supreme Court. The course further introduces students to the “case method,” the most prevalent teaching and learning method used by law schools. Students will be required to read Supreme Court decisions and the U.S. Constitution in some detail, and, will learn about key constitutional law principles and concepts as we study each case.

The cases selected represent a diversity of backgrounds as well, because the stories behind the cases are those of women and men of all races, ethnicities, sexual orientations and degrees of wealth. Many of the stories are those of so-called “ordinary” people who were not interested in creating a fuss, or achieving notoriety, or in making history. But they did make history and changed our society forever in the process.

The required readings for this course are the actual Supreme Court decisions (and their dissents when they occur), which students can easily download from any one of several websites provided by the instructor in this syllabus. For those students who wish to read beyond the Court decisions in a particular area of the law, about a particular issue, or about the case itself, the instructor will recommend specific articles and texts.
Course Objectives:

1. To introduce students to the basics of legal reasoning, and to the basics of U.S. constitutional law, illustrated through a study of Supreme Court decisions that pertain to women’s rights, and to issues concerning gender equality.
2. To introduce students to legal concepts such as, but not limited to: precedent; standing; rational basis test; suspect classification; strict scrutiny; intentional and disparate impact discrimination; privacy; equal protection; due process; consent; remedies; and formal and substantive equality.
3. To introduce students to how the U.S. court system is organized and how it works.
4. To introduce students to the cultural, political and social values and influences that have shaped Supreme Court decisions about women’s rights and gender equality, and, those that have the potential to shape future Supreme Court decisions.
5. To provide students with an opportunity to enhance their analytical skills.
6. To provide a learning environment in which students can understand and appreciate how thoughtful, committed and courageous individuals can change society.

Grade-Related Requirements:

1) Two, 3-4 page response papers and one 10-minute class presentation based on one of those papers in class #8 or class #9. The instructor will provide two topics to choose from for each paper, and will give students a set of criteria by which their papers will be evaluated. The first paper assignment will be distributed at the end of class #3; students will hand in that paper at the beginning of class #4. The second paper assignment will be distributed at the end of class #6 and will be handed in at the beginning of class #7. This requirement (the two papers and the presentation) will make up 50% of a student’s final grade. Computer malfunction is not an acceptable excuse for not submitting the papers on time.
2) A mid-term exam will be given during the first half of class #6 and will make up 20% of a student’s final grade. Students will be required to write on 2 of 3 topics provided by the instructor.
3) A final exam will be given during the final exam period and will make up 30% of a student’s final grade.
4) Class Attendance: Missing more than two classes may result in a lower final grade.
5) Reading Assignments: These should be completed by the beginning of the class under which they appear in the syllabus, unless otherwise indicated by the instructor.
6) Class Participation: While class participation does not formally make up a percentage of a student’s final grade, it may help the student get a higher final grade than they otherwise would have received by the papers, presentations and exams alone.

**Class Environment and Participation:** This class will be highly interactive. Healthy and vigorous discussion is highly encouraged, and students are expected to be respectful of others when ideas and opinions are expressed that are different from their own. All students will be encouraged to engage in class discussions, with the instructor leading and facilitating those discussions. Students are more likely to do well on both the paper assignments as well as the mid-term and final exams if they have excellent class attendance. Internet use is not permitted during class except when authorized by the instructor.

**Cell phones** are to be placed on vibrate so that the student may respond only to an emergency, should one occur.

**Headphones** are not permitted when class is in session.

**No texting** is permitted when class is in session.

**Food and beverages** are permitted in the classroom. However, students must clean their area before leaving class, and be sure that all garbage is removed and placed in appropriate trash bins.

**SYLLABUS**

The cases and related legal concepts and principles we will study (noted in brackets and italics below) will cover issues in the following areas: workplace environment/conditions and employment discrimination; abortion and reproductive rights; higher education and affirmative action; familial relations (marriage, divorce, child custody); domestic violence; consent; gender identity and sexual orientation discrimination; government benefits; civic duties; citizenship; and international law and human rights. In addition to learning about, and discussing the historical, legal, cultural, and social contexts of landmark Supreme Court cases, emerging and new issues about gender equality and civil rights will be vigorously explored.
Week

1: **Historical Background of Women’s Treatment in the Law:** Cases that illustrate traditional legal restrictions against women; an exploration of the constitutional and legislative doctrines that evolved to dismantle these restrictions; examination of the assumptions that the cases make about women; the laws’ purpose. Discussion: arguments about “protecting women’s health and morals”; structure/organization of the court system and how a case gets to the U.S. Supreme Court; “standard of review” and the following standards: rational basis; strict scrutiny; intermediate scrutiny. Explanation of elements of a court’s opinion; concepts of precedent, dictum and findings. [Bradwell v. Illinois; Muller v. Oregon; Goesart v. Cleary; Myers v. Hope Healthcare Center LLC (2015):]

Brief discussion about **Equality Doctrines and Gender Discrimination in an International Context:** Evolving jurisprudence of the United Nations Human Rights Committee and the U.S. Supreme Court; early international sources of women’s human rights; the Charter of the U.N.; the Universal Declaration of Human Rights and the International Bill of Rights; the U.S. Supreme Court as a comparative standard; debate among U.S. Supreme Court Justices about appealing to international law as a basis for Court rulings.

2: **The Constitutional Right to Equal Protection Under the Law:** Continuation of historical background; equality claims; concept of “formal equality”; classifications based on race, color, national origin vs gender classifications. Discussion of: The Fourteenth Amendment of the U.S. Constitution; the Equal Protection Clause; the Due Process Clause of the Fifth Amendment; Title VII of the Civil Rights Act of 1964; the Constitutional right to equal, individualized treatment; the notion of using sex as a proxy. [Reed v. Reed; Frontiero v. Richardson; Orr v. Orr]

3: **Moving from Individualized Fact-Finding to Decisions about the Right to Equal Group Treatment:** Comparison with decisions based on treating different groups equally; the role and dismantling of stereotypes. Discussion of: heightened level of review and sex-based classifications that “serve important government objectives,” and are “substantially related to achievement of those objections”; concept of “relief” and remedying inequality; who is the “victim?”; the Equal Rights Amendment; [Stanton v. Stanton; Craig v. Boren; Phillips v. Martin Marietta; Pittsburgh Press v. Pittsburgh Commission on Human Relations]
4: **Employment Discrimination and Formal Equality:** Examination of other sources of authority challenging classifications based on sex; discrimination based on sex; Discussion of the Equal Pay Act of 1963; more on Title VII of the Civil Rights Act of 1964; concepts of “comparable worth” and “pay equity”; more on sex stereotyping; concept of “bona fide occupational qualification”; The EEOC; *Price Waterhouse v. Hopkins; Dothard v. Rawlinson; Wengler v. Druggists Mutual Insurance Co; County of Washington v. Gunther*]

5 and 6: **When Equal Treatment Results in Unequal Outcomes—Substantive Equality and Taking Differences Into Account:** Substantive equality’s attempt to remedy unequal circumstances resulting from past discrimination. Discussion of: “affirmative action”; biological differences and pregnancy discrimination; parental leave provisions; “benign” classifications; arguments for “diversity”; substantive equality in the family; equality in the context of divorce and child custody; unmarried parents; differences in government benefits; jury duty. [Kahn v. Shevin; Johnson v. Transportation Agency; UAW v. Johnson Controls, Inc; United States v. Virginia; Geduldig v. Aiello; Newport News Shipbuilding & Dry Dock Co. v. EEOC; Ledbetter v. Goodyear Tire & Rubber Co.; Kirchberg v. Feenstra; Weinberger v. Weisenfeld; Nguyen v. IRS; Nevada Department of Human Resources v. Hibbs; Califano v. Goldfarb; Duren v. Missouri; Rostker v. Goldberg; Miller v. Albright; Fisher v. University of Texas ]

7: **The Imbalance of Power Between Men and Women:** Historical background, including a look at competing theories e.g., John Stuart Mill v. Catherine MacKinnon. Discussion of: legal concept of “gender neutrality” vs. legal concept of “special benefit” or “special protection rule.” Sexual harassment in the workplace; concept of “hostile work environment”; sexual harassment in educational institutions; domestic violence; women in the military. [Harris v. Forklift Systems; Burlington Industries v. Ellerth; Oncale v. Sundowner Offshore Services; Burlington Industries v. Ellerth; Faragher v. City of Boca Raton; Faragher v. City of Boca Raton; University of Pennsylvania v. EEOC; Davis v. Washington and Hammon v. Indiana; Meritor Savings Bank, FSB v. Vinson]

8: **Student Presentations with Questions/Answer Period**

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10: **Autonomy and the Concept of Consent:** Examination of the right to make one’s own decisions, regardless of the status of men; defining and explaining rape and distinguishing consent and non-consent. Discussion of: the relationship between culture and courts; feminist legal theory; legal dynamics governing marital rape and acquaintance rape; violence against women as an international human rights issue.
11: **Reproductive Rights, Autonomy and The Right to Privacy:** Historical perspective and the battle for birth control and contraception; examination of pregnancy and autonomy; the control of contraception and other aspects of women’s health. Discussion of the “right to privacy” and its Constitutional basis. [Griswold v. Connecticut; Eisenstadt v. Baird; Zubik et al v. Burwell; Burwell v. Hobby Lobby Stores, Inc.;]

12 and 13 **Abortion and the Right to Privacy:** Historical perspective; abortion reform laws; aftermath of the first decisions. Discussion of: abortion funding; issues pertaining to consent of the husband/father; consent of the parents; abortion procedures; bans on rare and controversial abortion procedures; the most recent Supreme Court cases on these issues. [Roe v. Wade; Planned Parenthood of Southeastern Pennsylvania v. Casey; Maher v. Roe; Harris v. McRae; Rust v. Sullivan; Planned Parenthood Assn. of Central Mo. V. Danforth; Bellotti v. Baird; Planned Parenthood Assn. of Kansas City, Mo. Inc. v. Ashcroft; Hodgson v. Minnesota; Ohio v. Akron Center for Reproductive Health; Thornburgh v. American College of Obstetricians and Gynecologists; Stenberg v. Carhart; Gonzales v. Carhart; Whole Woman’s Health v. Cole.]

14: **Gender Identity and Sexual Orientation:** What is the difference? An introduction to basic terminology and concepts; current state of the law in the U.S.; ENDA; arguments over religious exemptions; discrimination against transgender individuals. [Another look at Price Waterhouse v. Hopkins; Bowers v. Hardwick; Romers v. Evans; Lawrence v. Texas; U.S. v. Windsor; Hollingsworth v. Perry; Obergefell v. Hodges; a quick look at a few lower court cases.]

Useful websites for reading Court opinions and dissents; for background information on the Supreme Court and its Justices; links to videos; links to audio oral arguments before the Court; other research links:

- www.law.cornell.edu
- www.supremecourt.gov
- www.Scotusblog.com
- www.supreme.justia.com

Academic Integrity: Students are reminded that University policies concerning academic integrity and the student honor pledge are applicable to this course. Any student caught violating rules governing academic integrity will be reported to the academic integrity division of his or her university. Students are prohibited from cheating on exams, plagiarizing papers, submitting the same paper for credit in two courses without authorization, buying papers, submitting fraudulent documents and forging signatures.
UMBC Statement on Disabilities and Information for Obtaining Accommodations

"UMBC is committed to eliminating discriminatory obstacles that disadvantage students based on disability. Student Support Services (SSS) is the UMBC department designated to receive and maintain confidential files of disability-related documentation, certify eligibility for services, determine reasonable accommodations, develop with each student plans for the provision of such accommodations, and serve as a liaison between faculty members and students regarding disability-related issues."

If you require certain accommodations, please submit an application (found at http://sds.umbc.edu) and all disability documentation to Student Disability Services. Please see the application for details on appropriate documentation guidelines. For information or questions about the application, please call 410-455-2459. Once your accommodations have been approved, you will meet with the UMBC-Shady Grove Representative, Dr. Ashley Waters (awaters@umbc.edu), who will work with you and your instructors to ensure you receive the proper accommodations. If you have any questions or concerns, please notify Dr. Waters immediately.

For students at the Shady Grove campus, the Center for Academic Success (CAS) provides additional support. CAS provides test proctoring services and can act as a liaison between students at USG and their home campus, as well as between students and their professors. For more information on the services CAS provides, please visit http://www.shadygrove.umd.edu/campus-services/cas/dss.

For UMD/College Park Students: The University is legally obligated to provide appropriate accommodations for students with disabilities. The campus's Disability Support Service Office (DSS) works with students and faculty to address a variety of issues ranging from test anxiety to physical and psychological disabilities. If an instructor believes that a student may have a disability, DSS should be consulted (4-7682 or dissup@umd.edu). Note that to receive accommodations, students must first have their disabilities documented by DSS. The office then prepares an Accommodation Letter for course instructors regarding needed accommodations. Students are responsible for presenting this letter to their instructors by the end of the drop/add period.