POL 360: Women and the Law

Spring 2016
MWF 10:30, BRNG 1245

Professor and TA’s contact information:

Professor Pat Boling  Office: BRNG 2256  Phone: 494-3711  boling@purdue.edu
Office Hours: Tues 8:30-10:00, Thursday and Friday 1:30-3:00
*Use email for simple queries; come to my office hours to talk about ideas and substance!

TA: Mariliz Kastberg-Leonard  Office: BRNG 2237  mkastber@purdue.edu
Office Hours: Monday and Friday 11:30-12:30, Wednesday 9:30-10:30

Course Description:
This course examines how the law affects women and men with regard to a number of areas of life: 14th amendment guarantees of equal protection under the law, employment discrimination, sexual harassment, the gender pay gap, family law governing marriage and divorce, reproductive choice, same sex schools, and sexual assault. My goals are to explore salient and contested issues related to gender equality that have come before the courts, and to teach you to be critical thinkers and effective writers.

Attendance and discussion are important. I use the Socratic method, and will call on each of you several times during the semester to discuss cases and the ideas, issues, and legal doctrines presented by each day’s readings. Since close familiarity with the cases and other materials is essential for such discussion, you should read and brief the cases or other materials assigned for that day before you come to class. Because good discussions are a collective good that rely on the hard work and commitment of everyone enrolled to work well, you need to make time to prepare for this class, without fail. Otherwise discussions in class will flag, your participation grade will suffer, and you will be embarrassed.

You will be asked to write a short paper, brief a number of cases, and take a midterm and a final (these assignments are spelled out in detail below). I strongly encourage you to take notes and brief cases as a means to helping you remember and understand legal arguments and holdings; this will help you grasp complicated legal arguments and prepare for exams.

Learning goals:
1. You will master key historical, doctrinal and conceptual developments related to equal protection under the law guaranteed by the 14th Amendment to the U.S. Constitution, Title VII of the Civil Rights Act of 1964 (especially as it pertains to sexual harassment), Title IX of the Education Amendments of 1972, marriage and divorce, reproductive choice, and sexual assault.
2. You’ll develop the ability to think critically about political, legal and constitutional issues
   a. You will learn to notice and consider arguments that run counter to the majority’s position.
   b. You will be asked to play the devil’s advocate about a range of issues, including ones about which you have well-developed beliefs and opinions.
   c. You will be asked to write and voice lines of reasoning in response to hypothetical cases or sets of facts, in written assignments, essay questions on exams, debates and impromptu responses to Socratic questioning.
3. You will learn to engage in respectful civic debate, which quite different than agreeing to disagree or the notion that “everyone’s opinion is equally valid.” As citizens we need to learn to identify the heart of important controversies, and to recognize the strongest and most convincing argument for and against key positions or legal interpretations. The notion that one holds opinions without any
evidence or arguments to support them runs counter to a civil and thoughtful citizenry, where all are able to acknowledge and understand powerful arguments on all sides of heated debates, even though ultimately we may weigh them differently.

Required text:

Advice and FAQ:
- All items in this syllabus are subject to change, as events get in the way of the best laid plans. It is your responsibility to keep up with any changes to this syllabus by listening for announcements in class and regularly checking for course-related email messages and changes posted on Blackboard.
- In the event of a major campus emergency, course requirements, deadlines and grading rubrics are subject to change as needed. We’ll post changes in schedule and assignments on Blackboard.
- What should you call your instructors? Please call me Professor Boling. You can call your TA, Mariliz Kastberg-Leonard, Mariliz.
- All electronica should be turned OFF during class. Please bring hard copies of briefs and notes to class with you every day, along with your casebook.
- We will be engaging in face-to-face discussion constantly in this class, so you must pay attention when other students are speaking: that’s where you’ll learn the course material.

Class Assignments and grading

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<th>Assignment</th>
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<td>Class participation (see note below)</td>
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<td>Short writing assignment (due on February 15)</td>
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<td>Briefs of cases (see below)</td>
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<td>Midterm (March 7)</td>
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<td>Final exam (during finals week)</td>
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Grading:

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Participation:
- Classroom participation is crucial in this course, where a lot of the learning and instruction occurs through Socratic style questioning. All of you will be called on often to answer questions and to offer analyses and opinions of readings and cases. Because participation is the life blood of this class I endeavor to call on you often and to evaluate you carefully. I recommend that you prepare for class by
doing the assigned reading, taking notes on the reading materials and briefing the cases, and giving some thought to the study questions that follow the cases. When you’re called upon, don’t be afraid to express your views or play the devil’s advocate—but being prepared is key! Each time I call on you, I keep track of whether you were in class, how well prepared you are, the nature of our verbal exchange, etc. If the roll sheet indicates that you were present but you don’t respond when called upon, I will assume you were not really in class—so respond even if you have to say you’re not prepared. Full, prepared responses demonstrating that you have done the reading, have good ideas and are able to think on your feet will earn you an A (10 points); not being in class gets you a zero; being in class but not prepared earns you a D, and grades in between depend on the quality of your response.

• Regular attendance is important for getting the most out of this class. You are responsible for initialing the roll sheet each day during class to indicate that you are present. For the most part, I do not need to hear your excuses or reasons for missing class, as I anticipate that everyone will have his or her share of absences for all kinds of reasons (illness, family emergencies, deadlines in other classes, away trips for sports or interviews, etc), and will plan accordingly for the likelihood of missing a few classes over the course of the semester. Generally, missing more than two weeks’ worth of class (6 absences) is likely to hurt you with respect to learning the course material and style of thinking, so please treat that as a ceiling. Having said that, if you have a major medical or personal emergency (e.g., you come down with the flu, are hospitalized, there’s a death in the family, that sort of thing), you should let me know, and I’ll do what we can to accommodate your needs. Please don’t come to school when you’re ill—that’s not good for anyone.

**SHORT WRITING ASSIGNMENT:** There will be one writing assignment, handed out on February 8 and due on February 15, aimed at teaching you how to think carefully and critically, and to attend to the strongest arguments on both sides of the issue. You will also see this style of question on the midterm and final exams.

**BRIEFS:** We will teach you how to brief cases, and expect you to become competent at identifying relevant facts, legal issues, holdings, and the most germane arguments supporting the holdings. We will collect and grade about three dozen briefs, and we strongly recommend that you brief all the cases that appear on the syllabus. Briefing cases serves two important purposes, helping you learn the material well and helping you prepare for exams. I will explain expectations about briefing cases the first day of class.

**EXAMS:** There will be one midterm and one final for this class. Both will have objective (usually multiple choice or T/F) questions, and essay questions, including short essays, IDs, and hypothetical cases that ask you to write a reasoned decision drawing on relevant case law, attending to important evidence and arguments counterarguments for and against the position you take. Because we only have 50 minutes of class time, the hypothetical essay topics will be handed out before the day of the midterm, so you can analyze it and write it (word processed) at home. You’ll turn in your hypothetical the day of the midterm, and then do the objective style and short answer questions in class. The midterm is March 4, the final TBA.

**ACADEMIC DISHONESTY:** any form of plagiarism—presenting someone else’s work as you own, copying from other students’ work, or failure to cite references to books or other sources—is considered academic dishonesty. Those who are found cheating in such ways will receive a zero for the assignment involved, and be reported to the Dean of Students’ office. We are aware that you can find briefs of cases on line—but there isn’t much point to doing this, and when we detect this kind of plagiarism, you will get no credit for the brief. Please do your own work.
Schedule of classes (numbers refer to pages in Baer & Goldstein text; also note that there are a few required readings posted on Blackboard, as well as occasional handouts, review sheets, model briefs, assignments, etc.):

11-Jan Intro to course, the American legal system, gender asymmetry (Intro, 1-9)

Part I: gender equality under the 14th Amendment to the Constitution
13-Jan Blackstone’s Commentaries on the Laws of England (264-5); The Slaughterhouse Cases and Bradwell v. Illinois (11-18)
15-Jan E.C. Stanton’s letter to the editor, Minor v. Happersett, and women’s suffrage (18-25)

18-Jan Martin Luther King day, no class
22-Jan A century of ‘ordinary scrutiny’: Goesaert v. Cleary, Hoyt v. Florida (46-56)

25-Jan Almost strict scrutiny: Reed v. Reed, Frontiero v. Richardson (58-68)
27-Jan Gender asymmetry upheld: Kahn v. Shevin, Schlesinger v. Ballard; but see Weinberger v. Wiesenfeld (68-77)
29-Jan The new standard emerges: Craig v. Boren (77-85)

1-Feb Statutory rape: Michael M v. Sonoma County (85-95)
3-Feb Jury duty revisited: Taylor v. Louisiana, case note on JEB v. Alabama (95-104).
5-Feb Military service: Rostker v. Goldberg (104-115)

8-Feb Personnel Adm of MA v. Feeney (128-134); Williams, "The Equality Crisis" (on BB) NB: short papers assigned today

Part II: prohibitions of employment discrimination under Title VII of the Civil Rights Act of 1964
12-Feb Phillips v. Martin-Marietta, Patterson v. McLean Credit Union (148-50); we will also start with Sexual Harassment and Meritor Savings Bank v. Vinson (150-151)

17-Feb Burlington Industries v. Ellerth (163-167)
19-Feb Adverse promotion decisions: Price-Waterhouse v. Hopkins; Civil Rights Act of 1991 (167-177)

22-Feb Pregnant workers: Cleveland Bd of Ed v. LaFleur, UAW v. Johnson Controls (183-197)
24-Feb Geduldig v. Aiello, GE v. Gilbert (197-208); introduction to The Gender Gap reader (on BB)
26-Feb The Pregnancy Discrimination Act and Cal Fed v. Guerra (210-221)

29-Feb Affirmative action: Johnson v. Transportation Agency (222-237)
2-Mar Midterm review, hypotheticals handed out in class today and due Friday
4-Mar Midterm Exam: essays to be written at home, objectives and short answers in class
Part III: Marriage, divorce, custody, same sex marriage

Mar 14-18 Spring break, no class

21-Mar What's fair after divorce? Readings from The Gender Gap reader (on BB)

Part IV: Reproductive rights and technologies

28-Mar Roe v. Wade (369-382)
30-Mar Planned Parenthood of Southeastern Pennsylvania v. Casey (406-31)
1-Apr movie: "Silent Choices" (film, be sure you’re on time). Write a 1 page critical reflection on the film, due on Monday April 4. What questions and lives did the film explore? What themes or claims would you like to explore further? How did the movie supplement case law on abortion?

4-Apr Hill v. Colorado (446-462)
6-Apr Liptak & Schwartz, "Court rejects zone to buffer abortion clinic" (about McCullen v. Coakley), NYT, June 26, 2014; Liptak, "Justices' Rulings Advance Gays; Women Less So" (both on BB)
8-Apr Burwell v. Hobby Lobby Stores (on BB)

11-Apr Ferguson v. Charleston (373-380)
13-Apr Surrogacy arrangements: In re Baby M, Johnson v. Calvert (480-494)

Part V: Title IX and gender equality in public schools
15-Apr Same sex schools: MUW v. Hogan (510-517)

18-Apr US v. Virginia (517-533)
20-Apr Title IX and funding college sports: Cohen v. Brown University (533-543)
22-Apr Sexual harassment in schools: Franklin v. Gwinnett County, Gebser v. Lago Vista ISD, Davis v. Monroe County Board of Education (543-564)

Part VI: Sexual assault in courts and on campuses
25-Apr Rape: Goldberg v. Maryland, State v. Rusk, In the Interest of MTS (592-608)
27-Apr Campus sexual assault: readings TBA
29-Apr final discussion, review, and course wrap up

finals week final exam TBA
**Briefing**

Please give the professor or TA briefs for the following cases on the day they’re assigned:


→**Outline for how to do briefs (see the sample below). Keep briefs to 1 page if possible (occasionally you’ll go longer).**

**Parties, date, deciding court/citation** (for example: *Roe v. Wade* (1973) 410 US 113)

- you should know what the lower courts held as well as the final decision (most decisions we read are on appeals from lower federal or state courts)
- the citation generally tells you what court decided the case, and the casebook always tells you this bit of information. Most our cases come from federal courts, esp the US Supreme Court, and you will learn to recognize the court from the citation.

**Facts** (all cases tell a story; succinctly convey the pertinent facts of the story)

**Issue** (state the constitutional or legal issue presented as a question that could be answered yes or no)

**Holding & Reasoning** (first state what the court decided or held, then the main argument or reasons for arriving at the this judgment)

**Dissenting and concurring opinions** (outline the most important arguments offered by those concurring or dissenting from the majority opinion: do not leave these out!)

**Comments or discussion** (this is where you add any thoughts of your own; you don’t have to add your own comments, but you might find it useful or interesting to do so now and then)
**SAMPLE BRIEF**

*Craig v. Boren* (1976) 429 U.S. 190

**Facts.** Oklahoma passed a law prohibiting the sale of 3.2% beer to males under age 21 and to females under the age of 18. The government alleged that the purpose of the classification was to enhance traffic safety, and introduced statistical surveys showing that .18% of females and 2% of males between the ages of 18-20 were arrested for driving under the influence of alcohol.

**Issue.** Does the law allowing young women but not men to buy beer deprive males between the ages of 18 to 21 of equal protection under the law protected by the 14th A?

**Held.** Yes: Oklahoma’s law unconstitutionally discriminates against 18-20 year old men.

**Reasoning:** Justice William Brennan says the difference between males and females with respect to purchasing beer does not justify the differential treatment they are accorded under Oklahoma law, b/c the statistics provided do not support the conclusion that gender-based distinctions are closely tailored to achieving the important purpose of promoting traffic safety.

**Concurrences.** Justice Lewis Powell said this gender-based classification does not bear a fair and substantial relation to the purpose of the legislation. Justice John Paul Stevens says there is only one Equal Protection Clause. It does not require the courts to apply one standard of review in some cases and a different one in other cases.

**Dissent.** Justice William Rehnquist argues that the majority opinion is objectionable for two reasons. One, it concludes that in cases of men challenging gender-based discrimination, a more stringent standard of review is called for than is applied in cases involving most other types of classifications. Two, the Supreme Court of the United States (Supreme Court) is enunciating a heightened scrutiny test, that classifications based on gender must be substantially related to important interests, without citation or constitutional basis.

**Discussion.** This case establishes the current standard of review for gender-based classifications: to justify a gender-based classification, a state law must be substantially related to the achievement of an important governmental objective. This standard applies without regard to whether men or women are being discriminated against.

NB: Please *don’t* rely on the following website or its ilk; do you own work! No credit for plagiarized briefs