**Sex, Gender & Law in American History**

**HIST 362: Spring 2018**



Prof. Alison Lefkovitz

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MR 10:00-11:30 am

Class Room: Cullimore 110

Office Hours: MR 3:00-4:30 or by appointment

Office Hours Location: CULL 327

This course examines how the American legal system has used gender and sexuality as organizing categories over time. It first asks how the law treated men and women differently from the colonial period until the present. We will study laws that very clearly dictated different gender roles for men and women, including marriage laws, suffrage laws, and laws designating legal and illegal sex. We will also explore the ways that laws that seemed to apply generically to everyone affected men and women differently, including laws regulating slavery, citizenship, and segregation. Second, we will also examine how which sexual practices were considered troublesome changed over time, why, and how the law tried to control them. This will lead us to look also at how we came to create sexual identity as a category in the law. Finally, we will ask how race, class, and nationality all complicated these relationships.

**Code of Conduct:**

--Though I hope we disagree on many different issues, I expect you to treat the class, your fellow students, and me with respect at all times.

--No cell phones, no texting, no social media, etc. If students cannot conduct themselves without disruption, I will disallow computers in the classroom. Anyone who wishes to use a laptop must sit in the front row of the classroom.

--Plagiarism and other forms of academic dishonesty are unacceptable. You will be submitting all written work via turnitin. For further information on academic dishonesty and the policy I will follow if I discover any problems, see: <https://www.njit.edu/policies/sites/policies/files/academic-integrity-code.pdf>

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| Learning Outcomes |
| a) track the changes and continuities in the American legal system related to gender and sexuality |
| b) identify how these changes came to pass in class discussion and written assignments |
| c) engage in debate on the relationship between power and the law |
| d) assess interpretive approaches and biases in secondary sources |
| e) make arguments using legal documents as primary sources |
| f) relate historical changes to present day legal issues |
| g) demonstrate information literacy through the use of appropriate source material and original research and the ability to cite properly |

Course Requirements:

1. Attendance, participation, careful reading of the assigned texts, and pop quizzes if necessary. This class will mix lecture and discussion. You will be expected to participate in discussion. You will also need to actively participate to get points in this category. (150 points/100 points Honors)
2. 2-3 page short paper. Compare or contrast the politics of interracial sex (Hodes) and cross-dressing (Sears) prior to the Civil War in 2 to 3 double-spaced pages. You may want to consider how these kinds of sexual “deviancy” compared to other forms of sexuality we read about in the first two weeks. This should not be a list of things that are the same and things that are different. Rather, you should make an argument about how the situations were different *and why* or how things were similar *and why*. You can take into account change over time, differences in race and power in the two accounts, continuities in the law, etc. Be creative and feel free to visit me during office hours or email me for help. DUE FEBRUARY 8 (150 points/150 points Honors)
3. Current events. You will be responsible for retweeting a current event (newspaper, magazine, internet, or tv/radio spot) related to sex, gender, and the law four times this semester using the course hashtag #hist362. We will discuss these legal events in class and how they relate to the history we’re exploring. (50 points/25 points Honors).
4. Reader’s responses. These should be no more than a page in length and QUOTE at least two of that week’s assigned readings. Responses that quote two documents and are posted before class on Thursday will get full credit. I will not accept late reader’s responses. (150 points/100 points Honors)
5. A midterm. The exam will have identifications and short answer questions based on the themes and readings in the first half of the course. The midterm will be on THURSDAY, MARCH 1. (200 points/200 points Honors)
6. 7-9 page final paper. In this paper, you will be responsible for identifying and analyzing a gender/sexuality and law-related primary source. This could be a case, but it could also be a government report, a film, a short story, a series of newspaper articles, etc. The purpose of the paper is to put the source in its historical context using secondary sources from the course, outside research, or both. Successful papers will use the primary source to understand how gender or sexuality helped shape American life. The paper is due THURSDAY MAY 7 by 5 pm. (300 points/275 points Honors)
7. HONORS ONLY: You are responsible for writing an entry for patenthistory.org either individually or in groups of 2-4. You should choose a patent that is somehow related to gender or sexuality and use the Mark Eden bust developer entry as a model. The best entries will be published on the website. DUE APRIL 23 (150 points Honors)

Some readings will be available on **Moodle**.The following required text will be available at the bookstore for purchase. It is also available on reserve at the Library:

**--**Margot Canaday, *The Straight State: Sexuality and Citizenship in Twentieth Century America* (Princeton University Press, 2009).

Course Schedule

**Week 1: Introduction**

**Thursday, January 18**

--Introduction

**Week 2: Sex and Gender in the Colonies and Early Republic**

**Monday, January 22**

---Selection from William Bradford, *Of Plymouth Plantation, 1620-1647* (New York: Knopf, 1952). Excerpt.

--Mary Beth Norton, “Colonial Encounters in the Visible and Invisible Worlds: The Salem Witchcraft Crisis in the Context of the Maine Indian Wars,” in Hans-Jurgen Grabbe, ed., *Colonial Encounters: Essays in Early American History and Culture*, 51-68.

**Thursday January 25**

**--**Cornelia Hughes Dayton, "Taking the Trade: Abortion and Gender Relations in an Eighteenth-Century New England Village," *William and Mary Quarterly*, 48 (Jan. 1991), 19-49.

**Week 3: Coverture**

**Monday, January 29**

**--**Linda Kerber, *No Constitutional Right to Be Ladies*, chapter 1.

**--**William Blackstone, *Commentaries on the Laws of England*, Book the First, Chapter the Fifteenth: Of Husband and Wife.

**Thursday, February 1**

**--**Hendrik Hartog, *Man and Wife in America: A History* (Harvard University Press, 2000)*,* chapter 2.

**--***Chunn v. Chunn* (1838)

**Week 4: Race, Sex, and Gender in Antebellum America**

**Monday, February 5**

--Martha Hodes, *White Women, Black Men: Illicit Sex in the Nineteenth Century South*, chapter 4.

**Thursday, February 8**

--Guest speaker

--Clare Sears, “All that Glitters: Trans-ing California’s Gold Rush Migrations,” *GLQ: A Journal of Lesbian and Gay Studies* 14(2008), 383-402.

SHORT PAPER DUE

**Week 5: Postbellum Challenges and the Gender Order**

**Monday, February 12**

--Guest speaker

**Thursday, February 15**

*--Bradwell v. Illinois*

*--Pace v. Alabama* (1883)

**Week 6: Protectionism**

**Monday, February 19**

**--***Muller v. Oregon*

**--**Susan Glaspell, “A Jury of Her Peers”

**Thursday, February 22**

**--**Linda Gordon, “Social Insurance and Public Assistance: Gender in American Welfare Thought,” *American Historical Review*, (Feb 1992).

**Week 7: Citizenship**

**Monday, February 26**

**--**Nancy Cott, *Public Vows: A History of Marriage and the Nation* (Harvard University Press, 2006), chapter 6.

**--**Canaday, *The Straight State*, chapter 1.

**Thursday, March 1**

MIDTERM

**Week 8: The State, Regulation, and Gender**

**Monday, March 5**

--Sharra Vostral and Rayvon Fouché, “‘Selling’ Women: Lillian Gilbreth, Gender Translation, and Intellectual Property,” *Journal of Gender, Social Policy and the Law* 19.3 (2011): 825-850.

**Thursday, March 8**

**--**Canaday, *The Straight State*, chapter 3.

**--**Andrea Tone, “Contraceptive Consumers: Gender and the Political Economy of Birth Control in the 1930s,” *Journal of Social History* (Spring 1996), 485-506.

SPRING BREAK

**Week 9: Sex, Gender, and Warfare**

**Monday, March 19**

**--**Canaday, *The Straight State*, chapter 4.

--Fisher, *Wives and War*, excerpt

**Thursday, March 22**

**--**Canaday, *The Straight State*, chapters 5

*--Goesaert v. Cleary*

**Week 10: Sex across the Color Line**

**Monday, March 26**

**--**Mae Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton University Press, 2005), chapter 3.

**Thursday, March 29**

**--**Peggy Pascoe, “Miscegenation Law, Court Cases, and Ideologies of ‘Race’ in Twentieth-Century America,” *The Journal of American History* (June 1996), 44-69.

*--Loving v. Virginia*

**Week 11: The Intersection of Gender and Race in the 20th Century**

**Monday, April 2**

--Danielle McGuire, “’It Was like All of Us Had Been Raped’: Sexual Violence, Community Organization, and the African American Freedom Struggle,” *Journal of American History* (December 2004): 906-931.

--Johnnie Tillmon, “Welfare Is a Woman’s Issue”

**Thursday, April 5**

--Timothy Stewart-Winter, “Queer Law and Order: Sex, Criminality, and Policing in the Late Twentieth-Century United States,” *Journal of American History* (June 2015), 61-72.

--Robin Tolmach Lakoff, “Sexual Harassment on Trial: The Anita Hill/Clarence Thomas Narrative(s),” in Women’s America: Refocusing the Past, Kerber, ed. (2004) 670-676.

**Week 12: Undoing Gendered Roles**

**Monday, April 9**

**--**Serena Mayeri, *Reasoning from Race*, chapter 1.

*--Reed v. Reed*

**Thursday, April 12**

--Katherine Turk, “Out of the Revolution, Into the Mainstream: Employment Activism in the NOW Sears Campaign and the Growing Pains of Liberal Feminism,” *Journal of American History*97 (September 2010): 399-423

**Week 13: Bodies and Law**

**Monday, April 16**

--Leslie J. Reagan, “Rashes, Rights and Wrongs in the Hospital and in the Courtroom: German Measles, Abortion, and Malpractice before Roe and Doe,” Law and History Review 27 (2009), 241-280.

**Thursday, April 19**

*--Roe v. Wade*

--Sexing History, “I Must Increase My Bust,” episode 3

**Week 14: The Intersection of Gender and Sexuality**

**Monday, April 23**

**--**Canaday, *The Straight State*, chapters 6.

**HONORS BLOG ENTRY DUE**

**Thursday, April 26**

**--**Peggy Pascoe, “Sex, Gender, and Same-Sex Marriage,” in The Social Justice Group at the Center for Advanced Feminist Studies, University of Minnesota, ed., *Is Academic Feminism Dead?: Theory in Practice* (New York: New York University Press, 2000), 86-129.

**Week 15: Contemporary Issues**

**Monday, April 30**

--Julio Capo, “Why a Forgotten KKK Raid on a Gay Club in Miami Still Matters 80 Years Later,” Time Magazine, November 28, 2017.

--Timothy Stewart-Winter, “Queer/Muslim Politics in the Trump Era,” Pennsylvania Press Press Log, October 5, 2017.

--Kimberly Hamlin, “Roy Moore and the Revolution to Come,” Washington Post, November 19, 2017.

**Week 16**

**Monday, May 7**

**FINAL PAPER DUE**