

Sex, Gender & Law in American History

HIST 362: Spring 2024



Prof. Alison Lefkowitz

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TR 2:30-3:50 pm

Class Room: TIER 114

Drop-in Hours: Tuesday, 1:30-2:30, Thursday 11:30-1:30, and 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 culturally, medically, and in the law. Finally, we will ask how race, class, gender identity, and nationality all complicated these relationships.

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 and careful reading of the assigned texts. 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. (50 points)
- 2) 2-3 page short paper. Compare or contrast the politics of interracial sex (Sachs/Hodes) and cross-dressing (Brown/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 few 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. While you don’t need to use all four readings, you should integrate at least one from each week. Be creative and feel free to visit me during office hours or email me for help. DUE FEBRUARY 8 (150 points)
- 3) 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, FEBRUARY 29. (150 points)
- 4) Gold digger paper. You will be responsible for identifying a midcentury case involving a gold digger or fortune hunter and making an argument for why it best reveals the gender and class dynamics of the era. DUE MARCH 21 (100 points)
- 5) Discussion board responses. These should QUOTE at least two of that week’s assigned readings. Responses that quote two documents and are posted before class will get full credit. Late responses will receive half credit at most. (200 points)
- 6) Mock Trial. You will be responsible for an assigned or volunteered role in a mock trial. You will be evaluated based on your own oral presentation performance. If you miss the day of the mock trial, you can make up this work by recording a short podcast about what happened in the trial in class. This news article should reflect what happened in our own trial rather than what happened in real life. You can do this by interviewing your peers. (50 points).
- 7) Final paper proposal. In the final paper proposal, you will turn in a 1-2 page proposal stating what primary source, what secondary sources, and what history it will reflect OR what service learning program, what secondary sources, and what history it will reflect. See final paper below. DUE APRIL 11 (50 points).
- 8) Final Paper.
 OPTION 1: In this 8-9 page double-spaced paper, you will be responsible for identifying and analyzing a gender/sexuality and law-related primary source from

before 1998. It cannot be a source assigned as reading for the class. You can select a case, 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 law and life. **DUE MAY 5 by noon.** (250 points)

OPTION 2: SERVICE LEARNING OPTION. You may apply to participate in a service learning option for this course. If chosen, you will spend 20-30 hours volunteering with a local organization that deals with gender, sexuality, and law-related issues. This is an opportunity for you to put your skills to use in the community, to gain new real-world skills, and make professional connections. At the end you will turn in a 6-8-page paper describing how your volunteering advanced your understanding of sex, gender, and law. It should integrate critical peer-reviewed readings either assigned in class and identified on library databases to inform your analysis. **DUE MAY 5 by noon.** (250 points)

Code of Conduct:

-- I will be as understanding as I can be along the way with the sole exception of academic dishonesty (see below). If you have any trouble, confusion, or worry, please reach out. We can figure something out.

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

-- *Academic Integrity is the cornerstone of higher education and is central to the ideals of this course and the university. Cheating is strictly prohibited and devalues the degree that you are working on. As a member of the NJIT community, it is your responsibility to protect your educational investment by knowing and following the academic code of integrity policy that is found*

at: <http://www5.njit.edu/policies/sites/policies/files/academic-integrity-code.pdf>.

Please note that it is my professional obligation and responsibility to report any academic misconduct to the Dean of Students Office. Any student found in violation of the code by cheating, plagiarizing or using any online software inappropriately will result in disciplinary action. This may include a failing grade of F, and/or suspension or dismissal from the university. If you have any questions about the code of Academic Integrity, please contact the Dean of Students Office at dos@njit.edu

My addenda: please note self-plagiarism counts as plagiarism. You can use the same research but not the same language for more than one paper. You also may not use ChatGPT or other AI unless approved ahead of time by me.

--If you need support for any reason, please make use of our C-CAPS Staff at 973-596-3414.

Course Schedule

Week 1: Introduction

Tuesday, January 16

--Introduction

Thursday, January 18

--Richard Goodbeer, "‘Your Wife Will Be Your Biggest Accuser’: Reinforcing Codes of Manhood at New England Witch Trials," *Early American Studies* 15 (Summer 2017), 474-504.

Friday, January 19

MLK Day of Service (extra credit with selfie)

Week 2: Coverture and Reproduction

Tuesday, January 23

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

--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.

Thursday, January 25

-- *Martin v. Commonwealth* (MOCK TRIAL)

DISCUSSION BOARD TOPIC: In what ways did the law control women's lives and what were the limits of that control?

Week 3: Gender Identity in Early America

Tuesday, January 30

--Kathleen Brown, "Changed...into the Fashion of Man': The Politics of Sexual Difference in a Seventeenth Century Anglo-American Settlement," *Journal of the History of Sexuality* (Oct. 1995).

Thursday, February 1

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

DISCUSSION BOARD TOPIC: How were early American ideas about gender identity different than our own? In what ways were they the same?

Week 4: Interracial Sex in Antebellum America

Tuesday, February 6

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

Thursday, February 8

--Honor Sachs, "‘Freedom by a Judgement’: The Legal History of an Afro-Indian Family," *Law and History Review* 30 (February 2012), 173-203.

SHORT PAPER DUE

Week 5: Postbellum Challenges and the Gender Order

Tuesday, February 13

--Tera Hunter, "The Most Cruel Wrongs" in *Bound in Wedlock* (Harvard University Press, 2017).

--*Bradwell v. Illinois* (1873)

Thursday, February 15

--Megan Ming Francis, "The Birth of the NAACP, Mob Violence, and the Challenge of Public Opinion," *Civil Rights and the Making of Modern America* (2014), 29-58.

DISCUSSION BOARD TOPIC: Was the independence of women or interracial sex a greater challenge to the racial order after the Civil War?

Week 6: Citizenship

Tuesday, February 20

--*Muller v. Oregon* (MOCK TRIAL)

Thursday, February 22

--Cathleen D. Cahill, "'Our Democracy and the American Indian': Citizenship, Sovereignty, and the Native Vote in the 1920s," *Journal of Women's History* (Spring 2020), 41-51.

--"A Jury of Her Peers" short story

DISCUSSION BOARD TOPIC: What was the nature of women's citizenship at the turn of the century?

Week 7: Divorce and Race through the Great Migration

Tuesday, February 27

--Dylan C. Penningroth, "African American Divorce in Virginia and Washington, DC, 1865-1930," *Journal of Family History* (2008), 21-35.

Thursday, February 29

MIDTERM

Week 8: Gender During the Great Depression

Tuesday, March 5

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

Thursday, March 7

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

DISCUSSION BOARD TOPIC: Did the Depression loosen gender roles or reinforce them?

SPRING BREAK

Week 9: Sex, Gender, and WWII

Tuesday, March 19

--Fisher, *Wives and War*, excerpt

--*Goesaert v. Cleary* (1948)

Thursday, March 21

--Margot Canaday, "Building a Straight State: Sexuality and Social Citizenship under the 1944 G.I. Bill" *Journal of American History* (December 2003), 935-957.

GOLD DIGGER PAPER DUE

Week 10: Sex and the Failures of Justice during the Civil Rights Movement

Tuesday, March 26

--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.

Thursday, March 28

--*Loving v. Virginia* (1967)

DISCUSSION BOARD TOPIC: Why don't we remember gender issues as part of the civil rights movement?

Week 11: Second-Wave Feminism

Tuesday, April 2

--Serena Mayeri, "Pauli Murray and the Twentieth Century Quest for Legal and Social Equality," *Indiana Journal of Law and Social Equality* 80 (2014), 80-90.

--Johnnie Tillmon, "Welfare Is a Woman's Issue"

Thursday, April 4

--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

DISCUSSION BOARD TOPIC: Did second wave feminism succeed?

Week 12: Gay Liberation

Tuesday, April 9

--Marc Stein, "*Boutilier* and the U.S. Supreme Court's Sexual Revolution," *Law and History Review* (Fall 2005), 491-536.

Thursday, April 11

--Joanne Meyerowitz, "Transforming Sex: Christine Jorgensen in the Postwar U.S." *OAH Magazine of History* (March 1, 2006), 16-20.

--*MT v. JT*, 140 N.J. Super. 77; 355 A.2d 204 (1976).

DISCUSSION BOARD TOPIC: Why didn't gay liberation succeed legally in the 1970s?

Week 13: Establishing (and Dis-Establishing) Women's Bodily Autonomy

Tuesday, April 16

--*Roe v. Wade* (1973)

--*Dobbs v. Jackson* (2022)

Thursday, April 18

--*Relf v. Weinberger* (1974)

--Mytheli Sreenivas, "Worried about a Population Bust? History Shows We Shouldn't Be," *Washington Post*, July 19, 2021.

DISCUSSION BOARD TOPIC: Are birth control rights connected to a parent's ability to choose to have children?

Week 14: Sex and Gender in the 80s and 90s

Tuesday, April 23

--Mindy Chatauvert, "Resisting the Virus of Prejudice: Sex Workers Fight the AIDS Panic," *Notches*, July 7, 2016, <https://notchesblog.com/2016/07/07/resisting-the-virus-of-prejudice-sex-workers-fight-the-aids-panic/?mibextid=Zxz2cZ>

Thursday, April 25

--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.
DISCUSSION BOARD TOPIC: How have gender politics changed (or not) since the 1980s/90s?

Monday, May 5

FINAL PAPER DUE