

The Sociology of Law: Race, Gender and the U.S. Supreme Court

Fall 2021

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Office Hours: Friday 10-12 or by appointment

Overview

This course explores the relationship between law and society with a specific emphasis on race, gender, and sexual (in)equality. We will pay special attention to historical and current role of the U.S Supreme Court and its evolving interpretation of the U.S. Constitution and federal civil rights statutes. In so doing, the class is organized around several fundamental questions:

1. To what extent has the law promoted or inhibited progressive change with respect to race, gender and sexual equality?
2. Does law fundamentally shape society's broader values, culture, and practices surrounding race, gender, and sexuality, or does law simply reflect and follow changes in society's views/disputes with respect to these issues? Put more simply, does law shape society or is it the other way around?
3. What are the specific historical, cultural, and political contexts within which the U.S. Supreme Court has legally constructed the meaning of race, gender, and sexual (in)equality?

In addition to answering these basic questions, this course's **learning objectives** include:

1. Understanding the basic principles of constitutional law generally, and of the 14th Amendment to the U.S. Constitution, specifically;
2. Understanding the various interpretive approaches and doctrines that guide Supreme Court jurisprudence on race, gender, and sexual equality;
3. The ability to read and understand Supreme Court rulings;
4. The ability to write clearly and knowledgeably about all of the above

Required Materials

All weekly reading materials will be provided as PDF files; no need to buy anything.

Grading

Your grade in the course is based on the following components:

1. Midterm and final exam (30% each; 60% total): exams will be mostly written essay, but will also include some multiple choice and short answer;
2. Bi-weekly quizzes: (15%): every other Wednesday, there will be a short in-class quiz that covers the current week's READINGS. You may bring a cheat sheet to the quiz (no larger than an 8.5x11 sheet of paper);
3. Bi-weekly short writing assignments (15%): on non-quiz weeks, there will be a short writing assignment (around 1.5 double-spaced pages) that also covers only that week's READINGS. Assignments must be turned in by the beginning of Wednesday's class;
4. Attendance (10%): everyone may have ONE UNEXCUSED ABSENCE without penalty (excused absences are not subject to penalty); for every additional unexcused absence, 10% will be deducted from your attendance grade. For example, if you wind up with two unexcused absences, you would wind up with a 90 % for attendance; if you miss three, 80%, etc.

LEARNING ENVIRONMENT

We're all responsible for creating a respectful, scholarly environment in which we grow as critical learners, informed citizens, and compassionate human beings. Each of us has something unique and valuable to contribute, based on our different identities and life experiences, varied college majors, and backgrounds; this diversity is a strength and a resource that we will draw upon to learn from one another. Please join me in creating an inclusive learning environment for students that supports a diversity of perspectives and experiences and honors one another's identities (including race, ethnicity, gender, class, sexuality, religion, ability, age, citizenship status, etc.).

We will be exploring sensitive and challenging material in class, which may evoke strong emotions and opinions as well as disagreement. It is essential that we have a safe and trusting atmosphere in the classroom, in which we can explore uncomfortable topics and diverse perspectives in a thoughtful, deep, and respectful manner. Students are invited to share their personal experiences and beliefs, always reflecting on how they relate to class material.

Part of fostering critical thinking skills is challenging assumptions—those of others and your own. You will get the most out of this class if you open yourself up to being challenged and feeling uncomfortable. You are welcome to disagree with one another (and me!), but let's respectfully challenge each other's argument/comment (not each other, personally). If someone unintentionally says or does something offensive or hurtful, let's assume best intentions rather than demonize them, and use it as a collective learning opportunity to explain why what they said or did was offensive or hurtful.

LEARNING DURING A PANDEMIC

I strongly encourage you to get vaccinated against COVID-19 if you are not already vaccinated.

You are expected to follow the university mask mandate. **If you come to lecture and refuse to wear a mask, you will be asked to put on a mask. If you refuse to put on a mask, you will be asked to leave the building.** This will count as an unexcused absence for your discussion section. Unmasked students who fail to comply with the request to leave will be considered a disruptive student and will be referred to the Office of Student Conduct and Community Standards where they may be subject to disciplinary action under the [non-academic misconduct policy \(Links to an external site.\)](#).

If you have a medical condition that makes wearing a mask difficult, you **must** have a documented accommodation from the McBurney Center that exempts you from the mask requirement. No exceptions will be made.

If you feel sick, please stay home.

PRIVACY OF STUDENT RECORDS and the USAGE of AUDIO RECORDED LECTURES

See information about [privacy of student records and the usage of audio-recorded lectures](#)[Links to an external site.](#)

Usage of Audio Recorded Lectures Statement

Lecture materials and recordings for [insert class name] are protected intellectual property at UW-Madison. Students in this course may use the materials and recordings for their personal use related to participation in this class. Students may also take notes solely for their personal use. If a lecture is not already recorded, you are not authorized to record my lectures without my permission unless you are considered by the university to be a qualified student with a disability requiring accommodation. [Regent Policy Document 4-1] Students may not copy or have lecture materials and recordings outside of class, including posting on internet sites or selling to commercial entities. Students are also prohibited from providing or selling their personal notes to anyone else or being paid for taking notes by any person or commercial firm without the instructor's express written permission. Unauthorized use of these copyrighted lecture materials and recordings constitutes copyright infringement and may be addressed under the university's policies, UWS Chapters 14 and 17, governing student academic and non-academic misconduct.

ACADEMIC POLICIES

ACADEMIC INTEGRITY

By enrolling in this course, each student assumes the responsibilities of an active participant in UW-Madison's community of scholars in which everyone's academic work and behavior are held to the highest academic integrity standards. Academic misconduct compromises the integrity of the university. Cheating, fabrication, plagiarism, unauthorized collaboration, and helping others commit these acts are examples of academic misconduct, which can result in disciplinary action. This includes but is not limited to failure on the assignment/course, disciplinary probation, or suspension. Substantial or repeated cases of misconduct will be forwarded to the Office of Student Conduct & Community Standards for additional review. For more information, refer to <https://conduct.students.wisc.edu/academic-integrity/>

ACCOMMODATIONS FOR STUDENTS WITH DISABILITIES

McBurney Disability Resource Center syllabus statement:

“The University of Wisconsin-Madison supports the right of all enrolled students to a full and equal educational opportunity. The Americans with Disabilities Act (ADA), Wisconsin State Statute (36.12), and UW-Madison policy (Faculty Document 1071) require that students

with disabilities be reasonably accommodated in instruction and campus life. Reasonable accommodations for students with disabilities is a shared faculty and student responsibility. Students are expected to inform faculty [me] of their need for instructional accommodations by the end of the third week of the semester, or as soon as possible after a disability has been incurred or recognized. Faculty [I], will work either directly with the student [you] or in coordination with the McBurney Center to identify and provide reasonable instructional accommodations. Disability information, including instructional accommodations as part of a student's educational record, is confidential and protected under FERPA.” <http://mcburney.wisc.edu/facstaffother/faculty/syllabus.php>

DIVERSITY & INCLUSION

Institutional statement on diversity:

“Diversity is a source of strength, creativity, and innovation for UW-Madison. We value the contributions of each person and respect the profound ways their identity, culture, background, experience, status, abilities, and

opinion enrich the university community. We commit ourselves to the pursuit of excellence in teaching, research, outreach, and diversity as inextricably linked goals. The University of Wisconsin-Madison fulfills its public mission by creating a welcoming and inclusive community for people from every background – people who as students, faculty, and staff serve Wisconsin and the world.” <https://diversity.wisc.edu/>

PART I: RACE AND THE SUPREME COURT

Week 1 (Sept. 8): Introduction to the Class

NO READINGS

Week 2 (Sept. 13, 15): The 14th Amendment and the Supreme Court in the Pre-*Brown* Era

READINGS:

Patterson, "Race and the Schools Before Brown," pp. 1-20;

Dred Scott v. Sanford (1857)

Plessy v. Ferguson (1896)

Week 3 (Sept. 20, 22): *Brown v. Board of Education* and the End of "Separate but Equal"

READINGS:

Patterson, pp. 46-69;

Brown v. Board of Education (1954)

Sustein, "Did Brown Matter?" (*the New Yorker*)

Week 4 (Sept. 27, 29): Color Blindness or Racial Balancing?: Race and Law in the Civil Right Era

READINGS:

Patterson, pp. 118-46;

San Antonio School District v. Rodriguez (1973)

Week 5 (Oct. 4, 6): Affirmative Action

Grutter v. Bollinger (2003)

Kahlenberg, "The Future of Affirmative Action"

Barnes, "Court Limits Use of Race by School Districts"

Week 6 (Oct. 11, 13): Selected issues (hate speech; crime and policing; voting rights)

Week 7 (Oct. 18, 20): Exam Week

PART 2: GENDER, SEXUALITY, AND THE SUPREME COURT

Week 8 (Oct. 25, 27): Gender Stereotypes and Employment Discrimination

READINGS:

Thomas, "Women and Children Last," pp. 7-31

Dothard v. Rawlinson (1977)

Week 9 (Nov. 1, 3): Gender, the 14th Amendment, and the Supreme Court

READINGS:

Strebeigh, "Old Law Meets a New Case—*Reed*," pp. 28-47

U.S. v. Virginia (1996)

Week 10 (Nov. 8, 10): Pregnancy

READINGS:

Strebeigh, "What Happened to Sally Armandariz Could Not Happen to a Man;" pp. 81-89; The First Pregnancy Case: *Aiello*, pp. 90-103

Pedriana, "Discrimination by Definition: The Historical and Legal Paths to the Pregnancy Discrimination Act of 1978"

Week 11 (Nov. 15, 17): Sexual Harassment

READINGS:

Strebeigh, "No Law," pp. 209-17; "Naming Sexual Harassment," pp. 218-29

Thomas, "Taking it all the Way to Sandra O'Connor," pp. 169-86

Week 12 (Nov. 22, 24): Homosexuality and the Law prior to *Lawrence v. Texas*

WATCH: *Stonewall Uprising*

Andersen, "Sodomy Reform from *Bowers* to *Lawrence*," pp. 98-111

Week 13 (Nov. 29, Dec. 1): Homosexuality and the 14th Amendment after *Bowers*

READINGS:

Andersen, "Sodomy Reform from *Bowers* to *Lawrence*," pp. 112-141

Lawrence v. Texas (2003)

Week 14 (Dec. 6, 8): Sexual Identity and the Supreme Court: Where Things Stand Today

Week 15 (Dec. 13, 15): Exam week