

Gender and Family Policy Seminar Syllabus

This syllabus provides you with the citation for assigned cases; please access them through Lexis or Westlaw or in hard copy in the library. Most of the readings are not cases. Those marked with an asterisk* are posted on the course Blackboard site. All other assigned readings are included in the course reader available from the duplicating office.

The syllabus sets out the dates on which particular readings will be discussed. These dates are predictions but I will endeavor to adhere to them. However, I do not absolutely rule out alterations arising from the pace of the discussion. Any changes, if there are any, will be confirmed in class for the session that follows.

Class discussion generally. There is no examination in this class. Instead, class discussion of the required readings is an integral part of the course requirements. This class can be successful only if everyone takes seriously their obligation to prepare, attend, and participate in the classes. Students who are unprepared in, or absent from, more than two class sessions may be dropped from the course. To help us all get into the rhythm of involvement in the readings, we will take turns being responsible for leading class discussion. Everyone must take at least one turn. This responsibility involves circulating, no later than Friday evening prior to the Tuesday of the relevant class, one page of comments and questions about that set of readings, intended to provide a basis for their discussion. There are eight sets of readings indicated and numbered in the syllabus. I will cover all the readings that are not part of any of the reading sets.

Paper Topics: We will spend part of the first class session discussing possible paper topics. You may choose a topic I suggest or a topic of your own. Either way, please submit your topic to me in class, in writing, no later than the class session on January 31. Along with the topic, include at least three useful sources that you have identified. If you plan a topic of your own, also include a paragraph explaining its scope. Those who wish to pursue their own topics should probably confer with me ahead of time to help make sure it will work as a seminar paper. Everyone is of course invited to discuss their proposed topic with me, but if you need help in working out your topic, please confer with me *before* January 31. You can talk with me after class on the 17th and the 24th, or make an appointment to see me in my office. My regular office hours for this purpose will be on Thursday afternoon, the 19th and 26th of January. If you plan to see me then, it would be good if you could let me know ahead of time when you wish to come by. If Thursday afternoon cannot work for you, email me or contact me in class to set up a different time. My office phone is 965-2125; my email is ira@asu.edu.

Paper length: I anticipate final papers of about 20 to 25 double-spaced pages in length, *not* including footnotes. Those seeking credit for the writing requirement should expect to write at least

25 pages.

Schedule for Papers. You should submit an outline of your paper to me by the class session on February 28th. Outlines should be about two pages in length, and include additional sources you have identified beyond the three sources included with your choice of topic. I will provide feedback on the outlines by the following class on March 7. Those seeking credit for the Writing Requirement need to submit a draft of their paper to me no later than class on March 21. Earlier submissions are welcome. For all students, final drafts are due to me no later than the last day of the semester, which is May 10 (the last day of Final Exams). *I do NOT accept late papers*, other than in the case of students with health problems or family crises of the sort that justify postponement of their final exams for examination courses they are also taking this semester.

Paper Presentations and Discussion Leaders. The last four classes of the semester are reserved for student presentations of their papers. I expect two student presentations during each three hour session. *Please circulate a draft of your paper to the entire class no later than 5 p.m. of the Thursday preceding the Tuesday on which you will make your presentation.* If you prefer, you may send the draft to me and I will forward it to the entire class. One member of the class (other than the paper's author) will be designated the discussion leader for each paper. To assist the discussion leader, all the rest of us will submit questions or points for discussion about the paper, to the designated discussion leader, no later than 5 p.m. on the Monday before the class on Tuesday. Please copy me on questions you send to the discussion leader.

SCHEDULE OF READINGS

Tuesday, January 17

Introductory session. Discussion of paper topics. See paper topic handout.

Part I: Parents and Children

Tuesday, January 24

A. Child Support and Paternity (Topics 1 and 2 constitute *Reading Set 1*)

1. Who should pay support?

Ellman, *Ambiguous-Father Families*, from Mason, Skolnick and Sugarman, *ALL OUR FAMILIES* (Oxford University Press, 2d ed. 2003)

Dead Broke Dads' Child-Support Struggle, N.Y. Times, January 29, 2002.
Finding Common Ground on Poor Deadbeat Dads, N.Y. Times, February 3, 2002.
Murphy v. Meyers, 560 N.W.2d 752 (Minn. App. 1997)
County of San Luis Obispo v. Nathaniel J, 57 Cal. Rptr. 2d 843 (App. 1996)
S.F. v. T.M., 695 So. 2d 1186 (Ala. Civ. App. 1996)
Straub v. Todd, 645 N.E.2d 597 (Ind. 1994)
Budnick v. Silverman 805 So. 2d 1112 (Fla. App. 2002)
Fla. Stat. § 724.14
Steven S. v. Deborah D., 25 Cal.Rptr.3d 482 (App. 2005)
McBride v. Boughton, 20 Cal.Rptr.3d 115 (Appl 2004)

2. Some reflections on the basis of the support obligation

Sally Sheldon, *Unwilling Fathers and Abortion: Terminating Men's Child Support Obligations?*, 66 Modern Law Review 175 (2003).

Tuesday, January 31

PAPER TOPICS DUE

3. Calculating the amount. (*Topic 3 constitutes Reading Set 2*)

Ellman, *Child Support: How Much is Just Right?* (Forthcoming)*

4. More on identifying the legal father: Biology or something else?

A. The constitutional basics (*Lehr, Michael H.*, and their fellow travelers)

Ellman, Kurtz, Scott, Weithorn and Bix, FAMILY LAW: CASES, TEXT, PROBLEMS (4th ed. 2004) pp. 981-1035

Tuesday, February 7

4. More on identifying the legal father: Biology or something else? (Continued)

A. (Continued) The constitutional basics

B. What's best for kids?

Martin Guggenheim, WHAT'S WRONG WITH CHILDREN'S RIGHTS (2005), pp 50-96.

B. Parentage By Intent (*Topic B constitutes Reading Set 3*)

1. Heterosexual Relationships

Mitchell v. Banary, 759 N.E.2d 121 (Ill.App. 2001).

Nicholas H., 46 P.3d 932, 120 Cal. Rptr. 2d 146 (Cal. 2002)

Martin Guggenheim, supra., pp. 97-132

2. Same-Sex Relationships

Ellman, Kurtz et al, supra, pp. 1038–1067, 655-666, 1067-1073

Elisa B v. Emily B., 117 P.3d 660, 33 Cal. Rptr. 3d 46 (Cal. 2005)

Kristine H. v. Lisa R., 117 P.3d 690, 33 Cal. Rptr. 3d 81 (Cal. 2005)

K.M. v. E.G., 117 P.3d 673, 33 Cal. Rptr. 3d 61 (Cal. 2005)

Tuesday February 14

C. Parental Rights and Community Rights: Contrasting Cases

1. Parental Rights generally in the inculcation of culture and religion

Ellman, Kurtz, et al., 1077-1098 (Yoder and its ancestors)

2. Adoption of African-American Children: the Ban on Racial Preferences

(*Topic 2 constitutes Reading Set 4*)

Ellman, Kurtz et al, supra, pp 1259-1269

Elizabeth Bartholet, FAMILY BONDS (1993) pp. 86-117

Elizabeth Bartholet, NOBODY'S CHILDREN (1999) pp.186-189

Randall Kennedy, INTERRACIAL INTIMACIES (2003) pp. 447-479

3. Adoption of Native-American Children: the Indian Child Welfare Act

Clinton, Goldberg and Tsosie, AMERICAN INDIAN LAW (Rev. 4th ed. 2005) pp. 909-952

Tuesday, February 21

4. Parental Choice of Country: *Polovchak v. Meese*, 774 F.2d 731 (7th Cir. 1985).

5. Deaf Parents and Deaf Children: the Case of Cochlear Implants

Legal Background: Ellman, Kurtz et al pp 1141-1151.

Bonnie Tucker, *Deaf Culture, Cochlear Implants, and Elective Disability*, Hastings Center Report, Vol. 28, No. 4, July-August 1998, at 6.

Movie: *Sound and Fury*

For those interested, additional information is available at

<http://www.pbs.org/wnet/soundandfury/resources.html>

Part II Men and Women

Tuesday, February 28

PAPER OUTLINES DUE

A. Marriage and Marriage Reform Proposals (*Topic A constitutes Reading Set 5*)

Robert Putnam, *BOWLING ALONE*, Pp. 194-203

Ellman, *Marital Roles and Declining Marriage Rates* (forthcoming book chapter)*

Neil Gilbert and Rebecca Van Voorhis, *The Modern Paradox of Family Policy* (2003).*

Tuesday, March 7

B. Gender Identity: How does it come about?

(Items 1(d) through 1(f) constitute **Reading Set 6**)

1. *The Endocrine Basis of "Normality," and the effects when it goes awry*

- a. Federman, *Three Facets of Sexual Differentiation*, 350 N.Eng.J.Med. 323 (2004)
 - i. *For those who are interested (not assigned and not part of any Reading Set):*
 - (1) Reiner and Gearhart, *Discordant Sexual Identity in Some Genetic Males with Cloacal Extrophy Assigned to Female Sex at Birth*, 350 N.Engl.J. Med. 333 (2004).
 - (2) MacLaughlin and Donahoe, *Sex Determination and Differentiation*, 350 N.Eng.J.Med. 367 (2004)
- b. Jean Wilson, *The Role of Androgens in Male Gender Role Behavior*, 20 Endocrine Reviews 726 (1999), pp 726-730, 733 (bottom right, beginning "Discussion") - 735.
- c. Harris, *Pfizer Gives Up Testing Viagra on Women*, New York Times, Feb. 28, 2004

- d. Reassigning gender in an apparently normal individual: can it work?
 - i. John Colapinto, *As Nature Made Him*, Pp. 30-42, 44-45, 48, 50-54, 55-59, 60-62, 65, 67-68, 68-70.
- e. Assigning gender to persons of ambiguous gender: Intersex Individuals
 - i. Dreifus, *Declaring With Clarity, When Gender is Ambiguous*, New York Times, May 31, 2005.
 - ii. Erica Eugster, *Reality vs. Recommendations in the Care of Infants with Intersex Conditions* (Critique of Hastings Center Recommendations), 158 Arch, Pediatric and Adolescent Medicine 500 (2004).
- f. Voluntary gender reassignment: Transsexuals
 - i. Benoit Denizet-Lewis, *About a Boy Who Isn't*, New York Times Magazine, 5/26/2002, at 30-34.
 - ii. Jennifer Finney Boylan, *She's Not There: A Life in Two Genders* (2003), pp. 131-145, 150-160, 169, 171-175.

B. Gender Identity and Gender Changes in Law and Policy

- 2. *Regulation of cross-dressing; transexuality as medical condition.*
 - i. Eskridge and Hunter, *Sexuality, Gender and the Law* (2d ed. 2004) Pp. 1419-1437, 1444-1447.
- 3. *Who can a transsexual marry?*
 - i. Eskridge and Hunter, Pp. 1469-1478
 - ii. Susan Appleton, *Contesting Gender in Popular Culture and Family Law*, 80 Ind.L.J. 391 (2005), pp 431-433.
- 4. *Changing concepts: Appleton, 438-440.*

Tuesday March 14: Spring Break

Tuesday, March 21

C. Gender and Evolution

- 1. *Basic Background* (Topic C(1) constitutes **Reading Set 7**)
 - a. Jones and Goldsmith, *Law and Behavioral Biology*, 105 Columbia L.Rev. 405, 426-431 (2005)
 - b. Wright, THE MORAL ANIMAL, pp. 33-54, 383-392, 55-86
 - c. Buss, THE EVOLUTION OF DESIRE, pp. 28-58

- d. Science News: *Human, Monkey Shyness Varies by Gender*
- e. Buss, *Evolutionary Psychology: A New Paradigm for Social Science*, 6 Psychological Inquiry 1, 14-16 (1995)
- f. Erika Check, *The X-Factor*, 434 Nature 266 (2005)
- g. Jones and Goldsmith, *supra*, 461-466, 469-473, 484-492

2. *Some possible applications (Topic C(2) constitutes **Reading Set 8**)*

- a. Gender differences in seriousness of statutory rape?
 - i. Of boy by woman?
 - (1) Kate Zernike, *The Siren Song of Sex With Boys*, N.Y. Times, 12/11/2005*
 - (2) *Woman Had Affair With Son's Friend*, ABC News , 11/16/2005*
 - (3) *Too pretty for prison: Tampa Teacher Debra LaFave now a sex offender, no jail time*, Tampa Bay News 10.*
 - ii. Of girl by woman?
 - (1) Coach accused of sex with girl, St. Petersburg Times, 11/2/2005*
- b. Gender differences in career paths?
 - i. Report on Summers Incident, New Republic*
 - ii. Stephen Pinker, *Sex Ed*, The New Republic, February 14, 2005*
 - iii. Letters to the Editor responding to Pinker*

These Dates Reserved for Student Presentations:

Tuesday March 28

Tuesday April 4

Tuesday April 11

Tuesday April 18