

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, but are available for download from the course blackboard site. Those marked with an asterisk* are not available in electronic form but are instead found 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. I expect to adhere to them but do not 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 and required weekly submissions. There is no examination in this class. Instead, class discussion of the required readings is an integral part of the course requirements. It is obvious that the class works best when everyone takes seriously their obligation to prepare, attend, and participate. To help us achieve that, I would like every student to post on our blackboard site, before each class, a page of comments or questions about one of the readings assigned for that day. Here's the system for this:

1. This syllabus shows the assignments, by date, for each class session. You will see that some of the assignments for any given date are marked with a symbol [♣], followed by a number, e.g., ♣5. For every class, pick one of the readings so designated as the one for which *you* will write a page of comments or questions. *Exception:* Students are excused from this requirement for the class session on the day on which they are presenting their seminar paper project. (See class presentations, below.)

2. The number next to the symbol, e.g. "5" in the prior example, is the maximum number of students who may pick that particular reading. Readings are allocated on a first come, first serve basis. I will create a thread on the discussion board for this class for each of the designated readings. That way, everyone can see all the comments and questions that all class members have posted on the blackboard site about any particular reading. Once the maximum number of posts has been reached for any particular designated reading, class members who have not yet posted must choose another designated reading for their posting.

A. Note that the date and time of every posting is automatically displayed. It is thus easy to establish first-in-time priority.

B. FAQ of the day: *What if I write up a page, but while I was writing someone else posted the last allowed item for that reading?* To avoid this problem, anyone may make a *temporary posting* claiming one of the designated readings. *However, the claim expires in two hours.* Therefore, do not post such a claim before you have

begun writing your posting or you may lose it. Once a claim has expired, the student who made the expired claim cannot make another claim to that reading. However, that student may still post on that article if they do so before it has become fully subscribed by the postings or valid claims of other students.

Because participation in class discussion is a very important element of the class, students who are unprepared for, or absent from, more than two class sessions may be dropped from the course. A student who has not submitted their required weekly submission is unprepared for that class.

Paper Topics Proposals: 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 proposal to me in writing no later than Tuesday, February 2. Email submissions are preferred, but you may also leave a hard copy with my secretary, Sandy Flynn, in Room 269. *The proposal should contain a one-paragraph summary of what you intend to do in the paper, and at least three useful sources that you have identified and read.* If you need help in working out your topic, please confer with me *before* February 2. You can talk with me after either of the first two classes, or make an appointment to see me in my office. I will be available for this purpose in my office on both of the two prior Wednesdays from 2 to 3:30. Do try to let me know if you plan to come then. If you need an appointment at a different time, email me or contact me in class. My office phone is 965-2125; my email is ira@asu.edu.

In class presentations: You will see that space has been set aside for presentations on paper topics throughout the semester, beginning on February 16. Obviously, a student who presents on February 16 will have a different kind of presentation than a student who presents later in the semester after completing more work on his or her paper. Presentations earlier in the semester will focus on setting up the problem the student is working on and describing some ideas that from the literature. Presentations later in the semester will naturally reflect a fuller familiarity with the sources and a more fully developed argument. Nonetheless, no matter the date, every presentation has two functions: a) to provide feedback and help to the student giving it, so as to improve the final paper, and b) to acquaint the other students in the class with a topic not otherwise addressed in the readings. While the student making the presentation has the main responsibility for the second function, the rest of us have the main responsibility for the first. Both functions are likely to be more successful if the student making it provides the class with reading material ahead of time that is apt for that presentation. For presentations later in the semester, paper drafts are normally the best vehicle by which to achieve these purposes. For presentations earlier in the semester, an outline of issues and some excerpts from other articles or cases, etc., may be the way to go. *Note: if we have 13 or fewer students enrolled in the class, then the February 16 presentation date will be dropped.*

Final Paper length: I anticipate final papers of about 20 double-spaced pages (not including footnotes). Please use footnotes rather than endnotes, but don't count them in gauging the length (so that the paper should exceed 20 pages as needed to account for the footnotes). This is a shorter paper than I normally require for a three-hour class because I also take account of the weekly written assignment (the posting described above). Those seeking credit for the writing requirement

should note that their paper must be at least 25 pages long.

Some deadlines:

February 2: Paper topic proposals. See above.

February 16: Please submit an outline of your paper and a bibliography to me by class on February 16. (*Note: Students who are presenting on February 16 must submit this assignment by February 12.*) This submission should be two to four pages in length. The outline should reflect knowledge you gained in reading and thinking about your topic. It should identify the basic thesis or point and the subsidiary points or arguments you expect to offer in support of the basic thesis. The bibliography should list individual sources *you have read* and identify, in a sentence, why you expect that source to be helpful to your paper. You can list separately, without an explanatory sentence, additional sources you expect to consult but have not yet read. For these students, this submission will probably also constitute the reading that is circulated to the class ahead of the presentation.

March 17: *Those who wish to use their paper to meet the Graduation Writing Requirement* must submit a draft to me, via email, by 5 p.m. on March 17. Note that this is during spring break. You have the first half of spring break to finish your draft. I will spend the last two days of spring break reading the drafts submitted to me.

May 12: Final drafts due. This is the last day of final exams and thus the last day of the semester. Final drafts are due no later than 5 p.m. in this day, for *all* students. *As a general matter, I do NOT accept late papers and I do NOT give grades of incomplete. The single exception is for students with health problems or family crises of the sort that justify postponement of their final exams for the examination courses they are also taking this semester.*

CLASS SCHEDULE

January 19

Introductory Material

- A. Discussion of paper topics. See paper topic handout.
- B. Ellman, *Why Making Family Law is Hard* 7

Part I

Men, Women, and Couples

- II. The Legal Regulation of Intimate Relations
 - A. Eekelaar, *Family Law and Personal Life*, Chapter 5 (*Responsibility*). 7

January 26

- B. Eekelaar and Maclean, *Marriage and the Moral Bases of Personal Relationships*, 31 *Journal of Law and Society* 510 (2004). 5
- C. Two case studies on the legal regulation of intimate relations
 - 1. Hendrick Hartog, *The Scene of a Marriage: McGuire v. McGuire* (Also read the opinion in the case at 59 N.W.2d 336). 5
 - 2. Ira Ellman, *O'Brien v. O'Brien: Failed Reform, Unlikely Reformers* (Also read the opinion in the case at 489 N.E.2d 712). 5

February 2

Paper Topic Proposals Due

- III. Changing Marriage Roles?
 - A. Robert Putnam, *BOWLING ALONE*, Pp. 194-203
 - B. Ellman, *Marital Roles and Declining Marriage Rates*, 41 *Fam. L. Q.* 455 (2007) 5
 - C. Alison Booth, *Gender and Competition*, IZA Discussion Paper No. 4300 (July 2009). 5
 - D. Gilbert and Van Voorhis, *The Modern Paradox of Family Policy* (2003). 5
 - E. Gender and the Legal Profession: The Michigan Alumni Data Set 1967-2000 (Abstract only—a link to this long article is available for anyone who is interested).

February 9

- IV. Gender Identity: How does it come about?
 - A. *The Endocrine Basis of "Normality," and the effects when it goes awry* 3 (both below)
 - 1. Federman, *Three Facets of Sexual Differentiation*, 350 *N.Eng.J.Med.* 323

- (2004)
2. Reiner and Gearhart, *Discordant Sexual Identity in Some Genetic Males with Cloacal Exstrophy Assigned to Female Sex at Birth*, 350 N.Eng.J.Med. 333 (2004)
- B. Sports competitions: the case of the South African intersex runner. 4 (all below)
1. Alice Dreger, *Where's the Rulebook for Sex Verification?*, New York Times, August 22, 2009
 2. *Athlete Caster Semenya, forced to take gender test to confirm sex - appears as girly mag cover model*, New York Daily News, September 9, 2009
 3. *Caster Semenya, Forced to Take Gender Test, is a Woman...and a Man*. New York Daily News September 10, 2009
 4. Ariel Levy, *Either/Or: Sports, Sex, and the case of Caster Semenya*, The New Yorker, November 30, 2009.
- C. Reassigning gender in an apparently normal individual: does it work?
1. John Colapinto, *As Nature Made Him*, Pp. 30-42, 44-45, 48, 50-54, 55-59, 60-62, 65, 67-68, 68-70. 4
- D. Voluntary gender reassignment: Transsexuals
1. Jennifer Finney Boylan, *She's Not There: A Life in Two Genders* (2003), pp. 131-145, 150-160, 169, 171-175. 4

February 16

Two Students Present Today

- V. Gender, Evolution, and Mate Preferences
- 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 7
 - C. Buss, *THE EVOLUTION OF DESIRE*, pp. 28-58 7
 - D. *What Do Women Want?*, New York Times
 - E. Science News: *Human, Monkey Shyness Varies by Gender*
 - F. Buss, *Evolutionary Psychology: A New Paradigm for Social Science*, 6 Psychological Inquiry 1, 14-16 (1995)
 - G. Jones and Goldsmith, *supra*, 461-466, 469-473, 484-492

February 23

Two Students Present Today

- VI. Same Sex Couples
- A. Williams Institute Study on Same Sex Couples 4
 - B. Lee Badgett, *Why Gay People Get Married* (2009) pp. 64-85, 151-174 4
 - C. Law of Same-Sex Marriage 4
 1. Ellman et al, *Family Law 5th Edition* (forthcoming 2010), Chapter 2, pp. 25-50

Part II: Parents and Children

March 2

- I. Who Are the Parents I? *The traditional law of fatherhood.*
 - A. Eekelaar, *Family Law and Personal Life*, Chapter 3 (*Truth*). 4
 - B. Ellman, *Ambiguous-Father Families*, from Mason, Skolnick and Sugarman, *ALL OUR FAMILIES* (Oxford University Press, 2d ed. 2003). 4
 - C. Comparative lens--English law:
 1. Richard Collier and Sally Sheldon, *Fragmenting Fatherhood* (2009), Chapter 6, (Unmarried Fatherhood), pages 175-180, 189-203 4
 - D. Some American cases
 1. Paternal responsibilities resulting from rape of the biological father? *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)
 2. Sex and biological paternity, but not at the same time? *Steven S. v. Deborah D.*, 25 Cal.Rptr.3d 482 (App. 2005)
 - E. Should men be treated differently than women? Are they?
 1. Sally Sheldon, *Unwilling Fathers and Abortion: Terminating Men's Child Support Obligations?*, 66 Modern Law Review 175 (2003). 4

March 9

Two Students Present Today

- II. Who Are the Parents II? *Extending the traditional law to nontraditional parents*
 - A. Demographic changes in the number of nonmarital children
 1. Ellman et al, *Family Law* (5th edition, forthcoming 2010), Chapter 9 at 60-65
 - B. Statutory provisions on establishing paternity (for reference)
 1. Ellman et al, Chapter 9 at 70-81
 - C. The constitutional law of paternity
 1. Ellman, et al, Chapter 9 at 88-130 4 Everyone

SPRING BREAK

March 23

Two Students Present Today

- III. Gay and lesbian couples.
 - A. Solutions short of full parenthood: *de facto* parents.
 1. Ellman, et al Chapter 9 at 131-135, Chapter 6 at 84-102. 5
 2. A.R.S. § 25-415; *Egan v. Hochmuth* (Both on Blackboard)

- B. Conferring parenthood without biology.
 - 1. Ellman, et al at Chapter 9, 152-168 ↵5
 - 2. Adoption as an alternative. Ellman et al Chapter 9 at 135-151 ↵5

March 30

Two Students Present Today

- IV. Child Support: How Much?
 - A. Ellman, Braver, and MaCoun, *Intuitive Lawmaking: the Example of Child Support*, 6 J. Empirical Legal Stud. 69 (2009). ↵7
 - B. Ellman, Braver, and MaCoun, *Intuitive Lawmaking II: the Relationship Between Citizens' Endorsement of Principles and Their Resolution of Cases*. ↵7

April 6

- V. Child Support: Collection—Too Much or Too Little?
 - A. 2009 Census Bureau report on Child Support Collections
<http://www.census.gov/prod/2009pubs/p60-237.pdf>
 - B. Parness, *New Federal Paternity Laws; Securing More Fathers at Birth for the Children of Unwed Mothers*, 45 Brandeis L.J. 59, 63-82, 91-93 (2006). (The entire article is available on Blackboard, but only the indicated pages are assigned.) ↵3
 - C. Mincy, Garfinkel and Nepomnyaschy, *In-Hospital Paternity Establishment and Father Involvement in Fragile Families*, 67 J. Marriage and Family 611 (2005). ↵4
 - D. Elaine Sorenson and Ariel Hill, *Single Mothers and Their Child-Support Receipt: How Well Is Child-Support Enforcement Doing?*, 39 J. Human Resources 135 (2004). ↵4
- VI. The problem of uncollectable support: should it have been ordered in the first place?
 - A. Dead Broke Dads' Child-Support Struggle, N.Y. Times, January 29, 2002.
 - B. Finding Common Ground on Poor Deadbeat Dads, N.Y. Times, February 3, 2002.
 - C. Elaine Sorensen, *Understanding How Child-Support Arrears Reached \$18 Billion in California*, American Economic Review (2004) ↵4
 - D. Eckholm, *Mothers Scrimp as States Take Child Support*, N.Y. Times, 12/1/2007

April 13

Two Students Present

- VII. Children's Rights? Parents' Rights?
 - A. Martin Guggenheim, *What's Wrong with Children's Rights*, pp. 97-132 ↵7
 - B. Braver, Ellman, Votruba, & Fabricius, *Lay Judgments About Child Custody After Divorce: Child's Best Interests or Fairness to Parents?*. ↵7

April 20

Five Students Present