

Master of Legal Sciences	
Course: LAW AND EQUALITY POLICIES	Trimester: 2
	Credits: 5
	Language: English
Professors: Marisa Iglesias, Consuelo Chacartegui, Julia López	
Office: 40.0E04 // 40.0E24	
Office hours: Mondays from 4:00-6:00	
Email: marisa.iglesias@upf.edu; chelo.chacartegui@upf.edu; julia.lopez@upf.edu;	

Course Description
<p>Gender inequality is a complex social problem presenting multiple challenges from the political, economic, and legal point of view. This course offers conceptual tools to understand this phenomenon in depth, combining philosophical discussion with issues of institutional design. Students will study the basic elements of a gender perspective and examine the most relevant feminist debates and normative proposals for the social advancement of women. Students will learn how to use a gender perspective to assess the current institutional mechanisms which are working to obtain equality. The course will look beyond traditional academic information and will include the study of legal measures and policies at the global, European and national levels.</p>

Prerequisites
<p>It is important to be familiar with the constitutional theory of fundamental rights and with concepts such as equal treatment, non discrimination, and affirmative action.</p>

Methodology
<p>Readings will encourage active participation and will show the correlation between the theoretical and practical application of law in terms of equality and non discrimination on the grounds of gender.</p>

Schedule	
FIRST SECTION	<p>Gender, Law and Equality: Theoretical Framework</p> <p>TOPIC 1: Gender, Anti-discrimination Law and Structural Injustice</p> <p>a) Gender Inequality as a Social Problem b) The Social Construction of Gender c) Anti-discrimination Law and Structural Inequality</p> <p>Nicola Lacey, "Legislation Against Sex Discrimination: Questions from a Feminist Perspective", <i>Journal of Law and Society</i>, v. 14, n. 4, 1987, pp. 411-421 (available online).</p> <p>Iris Marion Young, "Equality of Whom? Social Groups and Judgments</p>

of Injustice", *The Journal of Political Philosophy*, v. 9, n.1, 2001, pp. 1-18, esp. 9-18 (available online).

Cadman Decision, ECJ, Case C-17/05 (2006); Gruber Decision, ECJ, Case C-249/97 (1999) (all available online)

Further reading:

Mari Mikkola, "Feminist Perspectives on Sex and Gender", *The Stanford Encyclopedia of Philosophy*, 2011 (available online)

TOPIC 2: Gender, Equal Opportunities and Positive Action

a) Formal and Substantive Equality of Opportunity b) Positive Action Measures: Detractors and Defenders c) Positive Action and Structural Injustice

Iris M. Young, "Affirmative Action and the Myth of Merit", in *Justice and the Politics of Difference*, Princeton University Press, 1990, esp. pp. 192-206 and 210-214 (available online).

Julie O'Brien, "Affirmative Action, Special Measures and the Sex Discrimination Act", *University of New South Wales Law Journal*, v. 27 (3), 2004, pp. 840-848 (available online).

Kalanke Decision, ECJ, Case C-450/93 (1995); Marschall Decision, ECJ, Case C-409/95 (1997); Abrahamsson Decision, ECJ, Case C-407/98 (2000); Art. 141 Amsterdam Treaty; Directive 2002/73/EC. (all available online)

Further reading:

Owen Fiss, "Affirmative Action as a Strategy of Justice", *Philosophy & Public Policy*, 1997, n. 17, 37-38 (available online).

TOPIC 3: Justice, Gender and the Family

a) Is the Family beyond Justice? b) Gender Inequality and the Public/Private Dichotomy c) The Personal as Political

Susan M. Okin, *Justice, Gender and the Family*, Basic Books, 1991, pp. 89-109 and 124-133.

Further reading:

Carole Pateman, "Feminist Critiques of the Public/Private Dichotomy" in *The Disorder of Women: Democracy, Feminism, and Political Theory*, Stanford University Press, Stanford, 1989, pp. 118-136 (available online)
Okin.

Susan M. Okin, "Vulnerability by Marriage", in *Justice, Gender and the Family*, Basic Books, 1991, pp. 134-169.

TOPIC 4. The Ethics of Care

a) Exporting Women's Values to Public Life b) The Ethics of Justice and the Ethics of Care c) Is there a "Feminine" Ethics? The Feminist Debate

Rosemarie Tong and Nancy Williams, "Feminist Ethics", *The Stanford Encyclopedia of Philosophy*, Stanford University, 2009 (extract available online)

Virginia Held, "The Ethics of Care", *The Handbook of Ethical Theory*, Oxford University Press, 2005, pp. 537-561 (extract available online)

Further Reading:

Will Kymlicka, *Contemporary Political Philosophy: An Introduction (Second Edition)*, Oxford University Press, 2001, pp. 398-420.

Rosemary Tong, "Carol's Gilligan's Ethics of Care", In *Feminine and Feminist Ethics*, Wadsworth Publishing, Belmont, 1993, pp. 80-104 (available online)

TOPIC 5. Social Inclusion and the Politics of Difference

a) The Sameness/Difference Debate. Gender, Power and Non-Domination. Assimilation v. Inclusion b) Democracy and Special Representation: Interests, Opinions and Perspectives

Catherine Mackinnon, "Difference and Dominance: On Sex Discrimination", in *Feminism Unmodified*, Harvard University Press, pp. 32-45 (available online)

Iris Marion Young, *Inclusion and Democracy*, Oxford University Press, 2000, pp. 133-153 (available online)

Further Reading:

Alison Jaggar, "Sexual Difference and Sexual Equality", in A. Jaggar (ed.) *Living with Contradictions*, Westview Press, Boulder, 1994, pp. 18-27 (available online)

TOPIC 6. Do we still Need a Gender Perspective?

a) From Positive Action to Gender Mainstreaming. Gender Mainstreaming and Structural Inequality: Dilemmas and Disappointments b) Can Women Have it all?

Maria Stratigaki, "Gender Mainstreaming vs. Positive Action. An Ongoing Conflict in EU Gender Equality Policy", *European Journal of Women's Studies*, v. 12, 2005, pp. 165-186 (available online).

Anne Marie Slaughter, "Why Women Still Can't Have It All", *The Atlantic*, July/August 2012, pp. 85-102. (available online).

	<p><i>Further Reading:</i></p> <p>Emanuela Lombardo and Petra Meier, "Gender Mainstreaming in EU. Incorporating a Feminist Reading", <i>European Journal of Women's Studies</i>, v. 13, 2006, pp. 151-166. (available online).</p>
<p>SECOND SECTION</p>	<p>Gender Discrimination in the Workplace</p> <p>TOPIC 1: Equality, Human Social Rights and Gender in the Era of Globalization</p> <p>a) Equality and Non-Discrimination Regulations: a Multilevel Perspective b) Decent work, Dignity and Gender c) The Main Principles in the Treatment of Gender Discrimination at Work: Gender Mainstreaming and Empowerment d) Formal Equality and Substantial Equality.</p> <p>Directive 2006/54/EC, of the European Parliament and of the Council, of 5 July 2006, on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)</p> <p>European Commission, Strategy for equality between women and men 2010-2015, COM (2010) 491 final</p> <p><i>Further reading</i></p> <p>Rubbery, J., Figueiredo, H, Smith, D. & Fagan, C., The ups and downs of European gender equality policy, <i>Industrial Relations Journal</i>, 35:6, 2004.</p>
	<p>TOPIC 2: The Forms Discrimination in the Workplace</p> <p>a) Gender Discrimination and Multiple Discrimination b) Direct and Indirect Discrimination at Work c) Sexual Harassment and Gender d) The Instruments Against Gender Discrimination at Work: the Equality Plans</p> <p>Judgment of the Court (Eighth Chamber), 22 November 2012, Case C-385/11</p> <p>Commission Decision of 26th April 2006, on the European Commission policy on protecting the dignity of the person and preventing psychological harassment and sexual harassment, Brussels, 26th April 2006, C(2006) 1624/3</p> <p><i>Further reading</i></p> <p>Schultz, V. & Goldsmith, E., Sexual Harassment: Legal Perspectives, in Paul B. Bates and Neil J. Smelser, editors, <i>International Encyclopedia of the Social and Behavioral Sciences</i> (Elsevier</p>

	Publishing Ltd, 2001)
	<p>TOPIC 3: Caregivers and Domestic Work from a Gender Perspective</p> <p>a) Corresponsibility versus Reconciliation b) Family Care in Europe: Mediterranean and Nordic Models c) Maternity Leaves and Social Benefits d) Domestic Workers and Gender</p> <p>Council Directive 2010/18/EU, of 8 March 2010, implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC</p> <p>Esping Andersen, G., (2002) Towards a postindustrial gender contract, in: Peter Auer & Bernard Gazier (eds), <i>The Future of Work, Employment and Social Protection</i>. Geneva: International Institute for Labour Studies, pp. 109-128.</p> <p><i>Further reading</i></p> <p>Lester, Gillian (2005) A Defense of Paid Family Leave, 28 <i>Harvard J.L. & Gender</i> 1.</p>
	<p>TOPIC 4: Women Workers and Gender Issues on Occupational Health</p> <p>a) Gender, Work and Health from a Holistic Perspective b) Women's Health and Reproductive Issues in the Workplace c) Gender and Occupational Health in the European Union</p> <p>Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)</p> <p>European Agency for Safety and Health at Work, <i>Mainstreaming Gender into Occupational Safety and Health</i>. Proceedings of a seminar organised in Brussels on the 15 June 2004 by the European Agency for Safety and Health at Work.</p> <p><i>Further reading</i></p> <p>Forastieri, V., <i>Women Workers and Gender Issues on Occupational Safety and Health</i>, International Labor Office, 2010.</p>
	<p>TOPIC 5: Working Hours, Rational Use of Time and Gender</p> <p>a) Rational Use of Time: the Position of the International Labour Organization b) Telework and Labour Conditions in Women c) Flexitime Measures versus Part-time Work: a</p>

Gender Perspective

International Labor Organisation (2007), *Decent Working Time: Balancing Workers' Needs with Business Requirements*. Conditions of Work and Employment Programme (TRAVAIL)

Further reading

European Commission (2009), *Flexible Working Time Arrangements and Gender Equality: A comparative review of 30 European countries*.

Smith, B., (2002) *Time Norms in the Workplace: Their Exclusionary Effect and Potential for Change*, 11 *Columbia Journal of Gender & Law* 271.

Activities

The course will combine theoretical sessions where students will put in common ideas from the readings with more practical sessions where they will critically analyze different normative tools and judicial decisions at the global, regional and local level.

This will serve to acquire the following knowledge:

1. Fundamental morals and policies of the principle of equality. Judicial equality, equality of opportunities and affirmative action.
2. The problem of structural inequality: institutional planning and protection of vulnerable groups. The causes of discrimination contemplated in the judicial system: gender, racial origin or ethnicity, religion or conviction, disabilities, age and sexual orientation.
3. Equality in the work place. Mechanisms of protection against discriminatory behavior. The legal nature and content of company plans for equality. The fight against assault because of gender and sexual assault as new forms of eliminating discrimination in the workplace.
4. Make proposals on labor conditions and gender and on the balance of work and family life, especially in regard to a new organization of working hours.

Students will also gain the following capabilities and skills detailed below:

1. The ability to identify situations of discrimination and measure the impact of institutional action in different contexts.
2. Skills to approach the phenomenon of inequality through a global perspective, systematic and interdisciplinary.
3. Critical analysis of existing standards and the ability to develop legal policies on equality. Looking at the requirements of equality in the labor market: in particular the application and evaluation of plans of equality in the workplace.
4. To understand in depth the application of jurisprudence of equality and nondiscrimination.
5. To be able to do audits of equality and nondiscrimination. Identifying situations of discrimination in collective bargaining, in job training and in wage structures and to articulate equality policies.

Grading		
Item	%	Notes
Continuous	40%	First section: Gender, Law and Equality. Theoretical Framework (attendance, participation, and a short essay)
Continuous	60%	Second section: Gender and Labor Relations (attendance, participation, and a short essay)

Materials

PART I: GENDER, LAW AND EQUALITY: THEORETICAL FRAMEWORK

Nicola Lacey, "Legislation Against Sex Discrimination: Questions from a Feminist Perspective", *Journal of Law and Society*, v. 14, n. 4, 1987, pp. 411-421.

Iris M. Young, "Affirmative Action and the Myth of Merit", in *Justice and the Politics of Difference*, Princeton University Press, 1990, esp. pp. 192-206 and 210-214.

Iris M. Young, *Inclusion and Democracy*, Oxford University Press, 2000.

Iris M. Young, "Equality of Whom? Social Groups and Judgments of Injustice", *The Journal of Political Philosophy*, v. 9, n.1, 2001, pp. 1-18, esp. 9-18.

Cadman Decision, ECJ, Case C-17/05 (2006); Gruber Decision, ECJ, Case C-249/97 (1999).

Julie O'Brien, "Affirmative Action, Special Measures and the Sex Discrimination Act", *University of New South Wales Law Journal*, v. 27 (3), 2004, pp. 840-848.

Kalanke Decision, ECJ, Case C-450/93 (1995); Marschall Decision, ECJ, Case C-409/95 (1997); Abrahamsson Decision, ECJ, Case C-407/98 (2000).

Susan M. Okin, *Justice, Gender and the Family*, Basic Books, 1991.

Rosemarie Tong and Nancy Williams, "Feminist Ethics", *The Stanford Encyclopedia of Philosophy*, Stanford University, 2009.

Virginia Held, "The Ethics of Care", *The Handbook of Ethical Theory*, Oxford University Press, 2005, pp. 537-561.

Catherine Mackinnon, "Difference and Dominance: On Sex Discrimination", in *Feminism Unmodified*, Harvard University Press, pp. 32-45.

Maria Stratigaki, "Gender Mainstreaming vs. Positive Action. An Ongoing Conflict in EU Gender Equality Policy", *European Journal of Women's Studies*, v. 12, 2005, pp. 165-186.

Anne Marie Slaughter, "Why Women Still Can't Have It All", *The Atlantic*, July/August 2012, pp. 85-102.

Mari Mikkola, "Feminist Perspectives on Sex and Gender", *The Stanford Encyclopedia of Philosophy*, 2011.

Carole Pateman, "Feminist Critiques of the Public/Private Dichotomy" in *The Disorder of Women: Democracy, Feminism, and Political Theory*, Stanford

University Press, Stanford, 1989, pp. 118-136.

Owen Fiss, "Affirmative Action as a Strategy of Justice", *Philosophy & Public Policy*, 1997, n. 17, 37-38.

Will Kymlicka, *Contemporary Political Philosophy: An Introduction (Second Edition)*, Oxford University Press, 2001, pp. 398-420.

Rosemary Tong, "Carol's Gilligan's Ethics of Care", In *Feminine and Feminist Ethics*, Wadsworth Publishing, Belmont, 1993, pp. 80-104.

Alison Jaggar, "Sexual Difference and Sexual Equality", in A. Jaggar (ed.) *Living with Contradictions*, Westview Press, Boulder, 1994, pp. 18-27.

Emanuela Lombardo and Petra Meier, "Gender Mainstreaming in EU. Incorporating a Feminist Reading", *European Journal of Women's Studies*, v. 13, 2006, pp. 151-166.

PART II.- GENDER DISCRIMINATION IN THE WORKPLACE

Directive 2006/54/EC, of the European Parliament and of the Council, of 5 July 2006, on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)

Council Directive 2010/18/EU, of 8 March 2010, implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC

Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)

Commission Decision of 26th April 2006, on the European Commission policy on protecting the dignity of the person and preventing psychological harassment and sexual harassment, Brussels, 26th April 2006, C(2006) 1624/3

Commission Recommendation of 27 November 1991 on the protection of the dignity of women and men at work (92/131/EEC)

Judgment of the Court (Eighth Chamber), 22 November 2012, Case C-385/11

Judgment of the Court (Grand Chamber) 8 June 2004, Case C-220/02

Judgment of the Court (Second Chamber) 30 September 2010, Case C 104/09

Judgment of the Court (Grand Chamber), 26 February 2008, Case C-506/06

Judgment of the Court, (Third Chamber), 1 July 2010, Case C 471/08

Johnson Controls Case-USA (International Union v. Johnson Controls, Inc., 499 U.S. 187 (1991))

Barbera, M., (2001) *Gender mainstreaming in the European Employment Strategy*, ETUI, Brussels.

Chacartegui Jávega, C., (2010) "Gender and sexual orientation in women: the double discrimination", *US-China Law Review*, David Publishing Company, vol. 7, num. 11

Esping Andersen, G. (2002) *Towards a postindustrial gender contract*, in: Peter Auer & Bernard Gazier (eds), *The Future of Work, Employment and Social Protection*. Geneva: International Institute for Labour Studies, pp. 109-128. <http://www-ilo-mirror.cornell.edu/public/english/bureau/inst/download/andersen.pdf>

European Agency for Safety and Health at Work (2004), *Mainstreaming Gender into occupational safety and health*, working paper. <http://osha.europa.eu/en/publications/reports/6805688>

European Commission (2009), *Flexible Working Time Arrangements and Gender Equality: A comparative review of 30 European countries*.

Forastieri, V., (2010) *Women Workers and Gender Issues on Occupational Safety and Health*, International Labor Office.

International Labor Organisation (2007), *Decent Working Time: Balancing Workers' Needs with Business Requirements*. Conditions of Work and Employment Programme (TRAVAIL)

Lester, Gillian (2005) *A Defense of Paid Family Leave*, 28 *Harvard J.L. & Gender* 1.

Moon, G, *Multiple discrimination: problems compounded or solutions found?* <http://www.justice.org.uk/images/pdfs/multiplerediscrimination.pdf>

Rubbery, J. Figueiredo, H., Smith, D. & Fagan, C., (2004) "The ups and downs of European gender equality policy", *Industrial Relations Journal*, 35:6, 2004.

Smith, Belinda M. (2002) *Time Norms in the Workplace: Their Exclusionary Effect and Potential for Change*, 11 *Columbia Journal Gender & Law* 271.

Schultz, V. & Goldsmith, (2001) E., *Sexual Harassment: Legal Perspectives*, in Paul B. Bates and Neil J. Smelser, editors, *International Encyclopedia of the Social and Behavioral Sciences* (Elsevier Publishing Ltd).

Zalesne, Deborah, (2002) *Sexual Harassment Law in the United States and South Africa: Facilitating the Transition from Legal Standards to Social Norms*, 25 *Harvard Women's L.J.* 143