

Advanced Master in Legal Sciences 2014-2015

Course: Law and Gender Policies

Term: 2

Number of Credits: 4

Language: English

Instructors: Professor Neus Torbisco Casals (I part) Professor Chelo Chacartegui (II part).

Office hours: By appointment only.

Email to: chelo.chacartegui@upf.edu or neus.torbisco@upf.edu

Course Description

Women have made great strides in society and at the workplace, but inequality persists. This puzzling phenomenon presents multiple challenges for different disciplines, from sociology and economics to legal and political studies: how does it arise, which are their main components, why does it persist in varied degrees across different societies, what are its effects and costs and, most centrally, which is the role of law and other institutions in its persistence or decline?

This course seeks to address gender inequality as an issue and discuss the tools that can contribute to confront it, with a particular focus on the role of law and policy. The first part focuses on a theoretical analysis of contested concepts such as 'gender' and 'discrimination', as well as on political theory contributions to gender studies and the intersections with race and culture. The second part of the course has a distinctive legal and institutional component. It will particularly address the crucial issue of gender discrimination in the work place with a view on debating legal adjustments and policy proposals to address this phenomenon at the global, European and national levels.

Prerequisites

Students should be interested in the topic and be willing to engage with interdisciplinary approaches and perspectives. Familiarity with basic theories of human (or fundamental) rights and labor law and policy is helpful, though not strictly required. The course will be taught in English, and thus knowledge of this language is essential.

Methodology

Except for a few introductory lectures, sessions will take the form of a seminar, with a brief introduction by the instructor to the topic and main questions or issues to be discussed. It will then be followed by a conversation in which active participation of students based on the readings is essential. Students are also expected to familiarize themselves with the reading materials prior to each session – this will take between 3-4 hours per session, plus 2 more hours for the weeks where an assignment is due.

Attendance is strictly required to at least 80% of the sessions.

The course will stimulate interdisciplinary inquiry, critical thinking, analytical writing and presentation skills. At the end of the course, the students should have acquired a sound understanding of the central questions and normative concepts explored as well as a capacity to connect local and global controversies over gender equality and non-discrimination in the workplace.

Assignments and Evaluation

A key pre-condition to be positively graded is regular attendance (at least 80% of sessions). The course evaluation will be based on different criteria intended to assess the student's learning progress:

First, active participation in class discussions is encouraged, which should reflect a sufficient knowledge of the reading materials assigned to each session. Students are thus expected to be familiar with the reading materials prior to the session. Participation will count as 30% of the final grade.

Secondly, students will be required to hand in four assignments (two in each part of the course, of a maximum of 1500 words) on a topic or question suggested by the instructor. A positive review will count as 30% of final grade.

Thirdly, an open-ended short essay style (between 6000 and 8000 words) will be required at the end of term, handed in via email or hard copy and due on the date that each instructor indicates. It consists of a free original paper that will focus on examining a suggested topic or question. The final essay counts as 40% of the final grade.

Overall, the first part of the course will count as 40% of the final grade, whereas the second part will count as 60% of the final grade.

Schedule and Work Plan

Part I. Gender, Law and Equality: Theoretical Framework

TOPIC 1: Gender, Equality and Structural Injustices

- a) Gender Inequalities: Facts and Unresolved Issues
- b) The Social Construction of Gender
- c) Human Rights, Structural Inequalities and the Limits of Justice

TOPIC 2: Gender, Equality of Opportunities and the Limits of Anti-discrimination Law

- a) Equality of Opportunity or Equality of Outcome?
- b) Anti-discrimination Law and its discontents
- c) Strategies: Affirmative Action versus Gender Mainstreaming

TOPIC 3: Democracy and the Politics of Difference

- a) Empowering women: The Sameness/Difference Debate
- b) Democracy, Deliberation and Special Representation

TOPIC 4. Gender, Religion and Culture

- a) Multiculturalism and Women's Rights
- b) Culture, Gender and the State: Participatory Approaches
- c) European Debates: The Headscarf Affair and Arrange Marriage in Britain

TOPIC 5: Justice, Gender and the Family

- a) Is the Family beyond Justice?
- b) Gender Inequality and the Public/Private Dichotomy
- c) Violence against Women

Part II: Gender Discrimination in the Workplace

TOPIC 1: Equality, Human Social Rights and Gender in the Era of Globalization

[1st and 2nd session]

- a) Equality and Non-Discrimination Regulations in the Workplace: 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. The implications in the Workplace

TOPIC 2: The Forms Discrimination in the Workplace

[3rd and 4th session]

- a) Gender Discrimination and Multiple Discrimination
- b) Direct and Indirect Discrimination at Work
- c) Sexual Harassment and Gender in the Workplace
- d) The Instruments Against Gender Discrimination at Work: the Equality Plans

TOPIC 3: Caregivers and Domestic Work from a Gender Perspective**[5th session]**

- a) Corresponsibility versus Reconciliation
- b) Family Care in Europe: Mediterranean and Nordic Models
- c) Maternity Leaves and Social Benefits
- d) Domestic Workers and Gender.

TOPIC 4: Women Workers and Gender Issues on Occupational Health**[6th session]**

- 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

TOPIC 5: Working Hours, Rational Use of Time and Gender**[7th session]**

- 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 Gender Perspective

Bibliography/List of readings and materials**Part I: Gender, Law and Equality: Theoretical Framework**

Note: A number of judicial decisions, both by European and North American courts, will be discussed throughout this first part of the course in order to illuminate the concepts and debates examined. These judgments as well as all other reading materials will be provided through web links or directly available on the Moodle page.

TOPIC 1: Gender, Equality and Structural Injustices**Basic readings**

The World's Women 2010: Trends and Statistics. United Nations Statistics Division.

Available at:

<http://unstats.un.org/unsd/demographic/products/Worldswomen/WW2010pub.htm>

[Reading should be focused on the executive summary, and it is recommended to read summaries of chapters on work, violence against women and access to power, too]

Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity*, New York, Routledge, Chapter 1

Iris Marion Young, "Equality of Whom? Social Groups and Judgments of Injustice", *The Journal of Political Philosophy*, v. 9, n.1, 2001: 1-18 [especially 9-18].

Nancy Fraser, "From Redistribution to Recognition. Dilemmas of Justice in a 'Post-Socialist' Age", in N. Fraser, *Justice Interruptus. Critical Reflections on the 'Post-Socialist' Condition*, Routledge, 1997.

Further reading

Kwame Anthony Appiah, *The Ethics of Identity*, Princeton University Press, 2007: 62-71

TOPIC 2: Gender, Equality of Opportunities and the Limits of Anti-discrimination Law

Basic Reading

Anne Phillips, "Defending Equality of Outcome", *The Journal of Political Philosophy*, vol.12, no.1, 2004, 1-19

Olivier DeSchutter, "Three Models of Equality and European Antidiscrimination Law", available at:

http://cridho.uclouvain.be/documents/Working.Papers/DeSchutter_NILQ.pdf

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

Further Reading

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

Robert Post, "Prejudicial Appearances. The Logic of American Anti Discrimination Law", in R. Post, J. Butler, T. Grey, R. Siegel (eds.) *Prejudicial Appearances*, Duke University Press, 2004

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.

TOPIC 3: Democracy and the Politics of Difference

Basic Reading

Anne Phillips, *The Politics of Presence. The Political Representation of Gender, Ethnicity and Race*, Oxford University Press [excerpts tba]

Melissa Williams, "The Uneasy Alliance of Group Representation and Deliberative Democracy", in W. Kymlicka and W. Norman (eds.) *Citizenship in Diverse Societies*, Oxford University Press, 2000: 124-145

Neus Torbisco Casals: "Institutionalising Difference: Some notes on Structural Inequalities and Democracy", available at:
http://www.law.yale.edu/documents/pdf/Institutionalising_Difference.pdf

Further Reading

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

TOPIC 4: Gender, Religion and Culture

Basic Readings

Susan M. Okin, "Is Multiculturalism Bad for Women?", and "Reply", in Joshua Cohen, Matthew Howard, and Martha Nussbaum (eds.), *Is Multiculturalism Bad for Women?*, Princeton University Press, 1999.

Ayelet Shachar, "Religion, State, and the Problem of Gender: New Modes of Citizenship and Governance in Diverse Societies", 50 *McGill Law Journal*: 49-87

Jill Marshall, "Conditions for Freedom? European Human Rights Law and the Islamic Headscarf Debate", *Human Rights Quarterly*, 2008: 631-654

Further Readings

Seyla Benhabib, *The Claims of Culture. Equality and Diversity in the Global Era*, Princeton University Press, 2002, Chapter 4 "Multiculturalism and Gendered Citizenship": 82-104

Monique Deveaux, *Gender and Justice in Multicultural Liberal States*, Oxford University Press, 2006. See especially Chapter 6 "Personal Autonomy and Cultural Tradition: The Arranged Marriage Debate in Britain", 155-185

Anne Phillips, *Multiculturalism without Culture*, Princeton University Press, 2007

Neus Torbisco Casals, "Beyond the Feminism versus Multiculturalism Debate: Towards a Participatory Approach", available at:
http://www.law.yale.edu/documents/pdf/sela/SELA11_Torbisco_CV_Eng_20110524.pdf

TOPIC 5: Justice, Gender and the Family

Basic Readings

Susan M. Okin, *Justice, Gender and the Family*, Basic Books, 1991: 89-109 and 124-169

Anne Marie Slaughter, "Why Women Still Can't Have It All", *The Atlantic*, July/August 2012: 85-102. Available at:
<http://www.theatlantic.com/magazine/archive/2012/07/why-women-still-cant-have->

it-all/309020/

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

Further reading

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

Part II: Gender Discrimination in the Workplace

TOPIC 1: Equality, Human Social Rights and Gender in the Era of Globalization

Basic Readings

-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)

-European Commission, Strategy for equality between women and men 2010-2015, COM (2010) 491 final

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

TOPIC 2: The Forms Discrimination in the Workplace

Basic Readings:

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

-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

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

TOPIC 3: Caregivers and Domestic Work from a Gender Perspective

Basic Readings

-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

-López López, J., Chacartegui Jávega, C., Gonzalez Cantón, C., (2013). "Social Rights in Changing Labor Markets: Caring for Caregivers in the European Union", en AA.VV. (dir. STONE, K., and ARTHURS, H.), Rethinking Workplace Regulation: Beyond the Standard Contract of Employment, New York, Russel Sage Foundation.

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

TOPIC 4: Women Workers and Gender Issues on Occupational Health

Basic Readings:

-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)

-European Agency for Safety and Health at Work, Mainstreaming Gender into Occupational Safety and Health. Proceedings of a seminar organised in Brussels on the 15 June 2004 by the European Agency for Safety and Health at Work.

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

TOPIC 5: Working Hours, Rational Use of Time and Gender

Basic Readings:

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

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