

Syllabus
Seminar in Law and Political Theory:
Gender Equality in Comparative Perspective
Fall 2008

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This seminar will consider the conceptual frameworks, legal mechanisms, and practical realities affecting gender equality in a range of constitutional systems. Our goal is to understand how different countries' constitutions address issues of gender equality, which approaches work best in which settings, and why. To that end, we will look at several different sorts of materials, including international law materials, political theory and legal scholarship, and cases and commentary from within several different legal systems.

Grades in the class will be based on (1) class participation, (2) a 25-30 page research paper, and (3) a 20-30 minute class presentation of your research. To complete the paper, each student will turn in the following:

1. a précis: a brief (no more than one page) description of the research project
Due on September 16
2. a source list: a list of the major sources consulted in the research (with a sentence or two describing each source) **Due on September 30**
3. a detailed outline of the paper **Due on October 14**
4. a first draft of the paper **Due on November 18**
5. a final draft of the paper **Due on December 9**

The class will meet once each week to discuss the readings for the first nine weeks, until October 31st. During that time, the class format will be discussion, with an occasional lecture on background. We will then take one week off, during which you will write the first draft of your research papers. For the final three weeks of the course, starting on November 14, students will present their research to the class.

Reading materials: Xeroxed readings available at the IU Bookstore (Volume I and Volume II).

Week 1 (September 2): Introduction: Women and Constitutions, Conceptions of Equality
Readings Vol I:

Introduction, **The Gender of Constitutional Jurisprudence** 1-5, 7-21 (Beverly Baines and Ruth Rubio-Marin, eds.) (Oxford University Press 2005)
J. Donald C. Galloway, *Three Models of Equality*, 38 **McGill L. J.** 64 (1993)

Week 2 (September 9): The Nature of Rights: Horizontal and Vertical, Positive and Negative, Valuable or Problematic?

Readings Vol. I:

Stephen Gardbaum, *The "Horizontal Effect" of Constitutional Rights*, 102 **Michigan L. Rev.** 387 (2003)

Isaiah Berlin, Four Essays on Liberty (1969)

Helen Irving, *More Than Rights in Constituting Equality: Gender Equality and Comparative Constitutional Law* (Susan H. Williams, ed.) (Cambridge University Press forthcoming 2009)

Week 3 (September 16): International Law and the Constitutional Commitment to Gender Equality

Readings Vol. I:

United Nations Charter (1945)

Universal Declaration of Human Rights (1948)

International Covenant on Civil and Political Rights (1976)

International Covenant on Economic, Social and Cultural Rights (1976)

Convention on the Elimination of All Forms of Discrimination Against Women (1981)

Fourth World Conference on Women Beijing Declaration (Platform for Action) (1995)

United Nations Security Council Resolution 1325 (2002)

European Convention for the Protection of Human Rights and Fundamental Freedoms (1953)

Brad R. Roth, *The CEDAW as a Collective Approach to Women's Rights*, 24 **Michigan J. of Int'l L.** 187 (2002)

Veronica Undurraga & Rebecca Cook, *Constitutional Incorporation of International and Comparative Human Rights Law: the Colombian Constitutional Court Decision C-355/2006 in Constituting Equality*

Week 4 (September 23): Gender in the Structure of Government: Electoral Quotas

Readings Vol. I:

Drude Dahlerup & Lenita Friedenvall, *Gender Quotas in Politics – A Constitutional Challenge in Constituting Equality*

Anne Phillips, The Politics of Presence 39-48, 52-56, 60-83 (Oxford University Press 1995)

Week 5 (September 30): Gender Equality and Religion/Culture: Constitutional Issues

Readings Vol. I:

Ayelet Schachar, Multicultural Jurisdictions: Cultural Differences and Women's Rights 1-10, 17-44, 45-87, 117-45 (Cambridge University Press 2001)

Madhavi Sunder, *Piercing the Veil*, 112 **Yale Law Journal** 1399, 1399-1415, 1432-33, 1458-72 (2003)

Aili Marie Tripp, *Conflicting Agendas? Women's Rights and Customary Law in African Constitutional Reform in Constituting Equality*

Week 6 (October 7): The Canadian Constitution: Part I (including a brief review of U.S. constitutional law on gender equality as background)

Readings Vol. II:

Mary Becker, Cynthia Grant Bowman, & Morrison Torrey, Feminist Jurisprudence: Taking Women Seriously (2d. ed. 2001)

Canadian Charter of Rights and Freedoms, Constitution Act, Part I (1982)

Andrews v. Law Society, [1989] 1 S.C. 143 (Canada)

Weatherall v. Canada, [1993] 2 S.C. 872 (Canada)

Regina v. Butler, [1992] 1 S.C. 452 (Canada)

Newfoundland v. NAPE, [2004] 2 Can. Sup Ct. LEXIS 62 (Canada)

Symes v. Canada, [1993] 4 S.C.R. 695 (Canada)

Week 7 (October 14): The Canadian Constitution: Part II

Readings Vol. II:

Claire L'Hereux-Dube', *It Takes a Vision: The Constitutionalization of Equality in Canada*, 14 **Yale J. L. & Fem.** 363 (2002)

Diana Majury, *The Charter, Equality Rights, and Women: Equivocation and Celebration*, 40 **Osgoode Hall L.J.** 297 (2002)

Emily Grabham, *Law v. Canada: New Directions for Equality Under the Canadian Charter?* 22 **Oxford J.L. Stud.** 641 (2002)

Patricia Hughes, *Recognizing Substantive Equality as a Foundational Constitutional Principle*, 22 **Dalhousie L.J.** 5 (1999)

Week 8 (October 28): The Indian Constitution

Readings Vol. II:

The Constitution of India, from **Constitutions of the Countries of the World** (A.P. Blaustein & G.H. Flanz, eds.) (Oceana Publications 1971, updated looseleaf service) 27, 31-34, 36-38, 42-45, 123-125, 132

Martha C. Nussbaum, *India: Implementing Sex Equality Through Law*, 2 **Chicago Journal of International Law** 35-58 (2001)

Danial Latifi & Anor v. Union of India and other petitions, 4 LRI 36 (September 28, 2002) (Supreme Court of India) from Lexis/Nexis

Louise Harmon & Eileen Kaufman, *Dazzling the World: A Study of India's Constitutional Amendment Mandating Reservations for Women on Rural Panchayats*, 19 **Berkeley Women's Law Journal** 32-105 (2004).

Weeks 9 (November 4): The South African Constitution

Readings Vol. II:

The Constitution of South Africa, from **Constitutions of the Countries of the World** 9-17, 22, 37

Mark S. Kende, *Gender Stereotypes in South African and American Constitutional Law: The Advantages of a Pragmatic Approach to Equality and Transformation*, 117 **South African Law Journal** 745 (2000)

President of the Republic of South Africa and another v. Hugo, 4 S.A. 1 (1997)

Saras Jagwanth & Christina Murray, "*No Nation Can Be Free When One Half of it is Enslaved*": *Constitutional Equality for Women in South Africa*, in **The Gender of Constitutional Jurisprudence** 230-55

Week 10 (November 11): No class

Week 11 (November 18), Week 12 (November 25): Student presentations

Week 13 (December 2): Conclusions: A look at the constitution as a whole
Readings Vol. II:

Vicki Jackson, *Gender Equality and the Idea of a Constitution: Entrenchment, Jurisdiction, Interpretation* in **Constituting Equality**

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Required materials:

Reproduced readings (Vol. I and II) available at the IU Bookstore

Reading assignment:

9/2: Vol. I:

*Introduction, **The Gender of Constitutional Jurisprudence** 1-5, 7-21 (Beverly Baines and Ruth Rubio-Marín, eds.) (Oxford University Press 2005)*
J. Donald C. Galloway, *Three Models of Equality*, 38 **McGill L. J.** 64 (1993)