

HIST 642-01: Proseminar – Gender, Sexuality, and Law in U.S. History
Fall 2015

Marc Stein
Class: Tues./Thurs. 2:10-3:25
Room: Science 268
Course Website: <https://ilearn.sfsu.edu/ay1516/course/view.php?id=1069>

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Office Hours: Tues./Thurs. 3:30-4:30

This course is an advanced undergraduate seminar on the legal history of gender and sexuality in the United States. On one level, the course explores law as a distinct realm of social, cultural, and political experience and a critical arena for the regulation and production of gender and sexuality. On another level, the course uses legal sources to consider the broader history of gender, sexuality, and power in the United States.

After an introductory week that addresses key concepts and theories, the course is organized chronologically in six two-week units. For each class, students read secondary sources (journal essays or book chapters) that examine an aspect of the history of gender, sexuality, and law. The readings provide students with opportunities for learning about the history of gender, sexuality, and law and thinking about the ways in which historians conduct research, develop arguments, and present their work. The readings have been selected to teach students about history and historiography, but also to provide models for students to use as they work on their research papers. The final two weeks are devoted to student presentations.

Course Eligibility and Rules

Students must successfully complete ENG 214 and History 300 before taking this course. Upper division or graduate status is required. Priority is given to senior history majors and history graduate students. The seminar meets twice a week. The readings are central to the course and must be completed before each class. Drinking and eating during class is fine, as long as this is not disruptive for other students. Electronic devices such as laptops may be used during class, but only for class-related purposes. When using electronic devices, students should make every effort to minimize disruptive sounds, including rings, beeps, vibrations, and loud typing.

Readings

All of the assigned readings are available via the SFSU library, the course website, and/or internet links. Students are responsible for making sure that they have the assigned readings available in class, either in printed or electronic format. The readings will serve as the basis for class discussion, so they must be accessible during seminar discussions.

Grading

Grades will be based on the following:

Class Participation	Aug.-Dec.	25%
Reading Quizzes and Writing Exercises	Aug.-Dec.	20%

Paper Proposal and Bibliography	24 Oct.	10%
Seminar Presentation	1-10 Dec.	10%
Research Paper	Dec.	30%
Best Graded Component	Aug.-Dec.	5%

Class participation is critically important since the seminar will not feature lectures and much of the learning will happen in discussion and dialogue. Students are expected to attend every class meeting (except in cases of serious illnesses and emergencies), make up missed work, come to class on time, remain present until the end of class, complete all readings assigned before class, come to class prepared to discuss the readings, respond constructively and respectfully to the comments and presentations of other seminar participants, and help create a positive learning environment for the class as a whole.

In preparing your written work, students are expected to read and follow the guidelines set forth in Marc Stein, “Writing History,” which will be distributed in class.

Reading Quizzes and Writing Exercises: There will be a minimum of four short reading quizzes and writing exercises that will be based on the assigned course readings. The quizzes and exercises are meant to strengthen reading and writing skills and help prepare students to succeed on the major research paper assignment.

Paper Proposal and Bibliography: During the semester, students will pursue independent primary and secondary research on a topic related to the course. We will devote class time each week to a discussion of primary and secondary sources that are available for research papers. Consultations with the instructor at every stage of the research and writing process are strongly encouraged and topics must be approved in advance. In late October, students will submit a research paper proposal (maximum 750 words for undergraduates and 1250 words for graduate students) and a bibliography of primary and secondary sources. The proposal will present an original research question that will be (1) addressed with the use of primary sources, and (2) situated in relation to relevant scholarly debates and discussions. The proposal should also address the significance and importance of the research project, the research methods that will be used, and, if possible, the structure of the essay.

Seminar Presentation: In the final two weeks of the term, students will present a preliminary version of their research papers to the seminar. Each student will have approximately ten minutes for their oral presentations, which will be followed by approximately five minutes for questions and comments. Students may read their papers or present their work extemporaneously, but either way they should consider the most effective ways to communicate with their audience. Students should be mindful of the fact that written prose does not always translate effectively into spoken performance, so it is important to reflect on the most effective means of communication for your seminar presentation.

Research Paper: Students will present a well-researched essay based on primary sources, with appropriate references to relevant debates and discussions in the secondary literature. In other words, the research paper will present an original and interesting historical argument about the past and the thesis will be situated in relation to recent scholarly interpretations. The

maximum length for undergraduates is 5000 words (including notes); the maximum length for graduate students is 7500 words (including notes).

Academic Honesty

Academic integrity is a fundamental principle of the university. Academic dishonesty, in the form of cheating or plagiarism, represents an attempt to gain an unfair advantage and it is expressly prohibited by the SFSU Student Code of Conduct. Cheating includes, but is not limited to, gaining unfair access to answers to exams, fabrication of work, helping other students to cheat, etc. Plagiarism can be defined as using another person's words or work without proper acknowledgment (see also <http://conduct.sfsu.edu/plagiarism> for more information on avoiding plagiarism). Students who are found to have cheated or plagiarized will be subject to discipline ranging from receiving a failing grade for the specific assignment to referral to the Office of Judicial Affairs and Student Discipline to possible suspension or expulsion. All instances of academic dishonesty are reported to the Department Chair and College Dean. Students are responsible for knowing the SFSU regulations concerning cheating and plagiarism, found in the University Bulletin and online at: <http://conduct.sfsu.edu/standards>.

Accommodations

Students with disabilities who need reasonable accommodations are encouraged to contact the instructor. The Disability Programs and Resource Center (DPRC) is available to facilitate the reasonable accommodations process. The DPRC is located in the Student Service Building and can be reached by telephone (voice/TTY 415-338-2472) or by email dprc@sfsu.edu.”

Sexual Violence, Sex Discrimination, and Gender Discrimination

SFSU fosters a campus free of sexual violence including sexual harassment, domestic violence, dating violence, stalking, and/or any form of sex or gender discrimination. If you disclose a personal experience as an SF State student, the course instructor is required to notify the Dean of Students. To disclose any such violence confidentially, contact: The SAFE Place - (415) 338-2208; http://www.sfsu.edu/~safe_plc/ Counseling and Psychological Services Center - (415) 338-2208; <http://psyservs.sfsu.edu/> For more information on your rights and available resources: <http://titleix.sfsu.edu>.”

Student Learning Objectives

This course is designed to promote various student learning objectives. After successfully completing the course, students should be able to:

- demonstrate an advanced understanding of historical ways of knowing, historical methods of research and writing, and the concept of historiography
- identify, read, interpret, and discuss primary and secondary historical sources
- design, complete, and present an advanced undergraduate or graduate historical research essay

- have a broad and critical understanding of the history of gender, sexuality, and law in the United States
- articulate the relevance of historical research on gender, sexuality, and law for today's society

Schedule

Introduction

- 25 Aug. Introduction to the Course
- 27 Aug. Concepts and Sources

Colonial America

- 1 Sep. Witchcraft and Sodomy in Colonial New England
Readings: Elaine Breslaw, "Tituba's Confession: The Multicultural Dimensions of the 1692 Salem Witch-Hunt," *Ethnohistory* 44, no. 3 (Summer 1997): 535-556; Richard Godbeer, "'The Cry of Sodom': Discourse, Intercourse, and Desire in Colonial New England," *William and Mary Quarterly* 52, no. 2 (Apr. 1995): 259-286.
- 3 Sep. Abortion in Colonial New England
Readings: Cornelia Hughes Dayton, "Abortion and Gender Relations in an Eighteenth-Century New England Village," *William and Mary Quarterly* 48, no. 1 (Jan. 1991): 19-49.
- 8 Sep. Interracial Sex and Gender Transgression in Colonial Virginia
Readings: A. Leon Higginbotham and Barbara Kopytoff, "Racial Purity and Interracial Sex in the Law of Colonial and Antebellum Virginia," *Georgetown Law Journal* 77 (Aug. 1989): 1967-2029; Kathleen Brown, "'Changed...into the Fashion of Man': The Politics of Sexual Difference in a Seventeenth-Century Anglo-American Settlement," *Journal of the History of Sexuality* 6 (1995): 171-193.
- 10 Sep. Comparative Colonialisms
Readings: Deborah Rosen, "Women and Property across Colonial America: A Comparison of Legal Systems in New Mexico and New York," *William and Mary Quarterly* 60, no. 2 (Apr. 2003): 355-381; Jennifer Spear, "Colonial Intimacies: Legislating Sex in French Louisiana," *William and Mary Quarterly* 60, no. 1 (Jan. 2003): 75-98.

Revolutionary and Republican America

- 15 Sep. Gender and Citizenship
Readings: Linda K. Kerber, "The Paradox of Women's Citizenship in the Early Republic: The Case of *Martin vs. Massachusetts*, 1805," *American Historical*

Review 97 (April 1992): 349-78; Linda K. Kerber, "The Meanings of Citizenship," *Journal of American History* 84, no. 3 (Dec. 1997): 833-854.

- 17 Sep. Marriage and Divorce
Readings: Nancy Cott, "Divorce and the Changing Status of Women in Eighteenth-Century Massachusetts," *William and Mary Quarterly* 33, no. 4 (Oct. 1976): 586-614.
- 17-18 Sep. Rights and Wrongs: A Constitution Day Conference at SF State
17 Sep.: 2:00p.m.-7:00p.m.
18 Sep.: 9:00a.m.-7:00p.m.
<http://history.sfsu.edu/content/constitution-day>
- 22 Sep. Slavery and Freedom
Readings: Laura Edwards, "Enslaved Women and the Law: Paradoxes of Subordination in the Post-Revolutionary Carolinas," *Slavery and Abolition* 26, no. 2 (Aug. 2005): 305-323; Loren Schweninger, "Freedom Suits, African American Women, and the Genealogy of Slavery," *William and Mary Quarterly* 71, no. 1 (Jan. 2014): 35-62.
- 24 Sep. Sexual Violence
Readings: Marybeth Hamilton Arnold, "'The Life of A Citizen in the Hands of a Woman': Sexual Assault in New York City, 1790 to 1820," in *Passion and Power: Sexuality in History*, ed. Kathy Peiss and Christina Simmons (Philadelphia: Temple Univ. Press, 1989), 35-56; Sharon Block, "Lines of Color, Sex, and Service: Comparative Sexual Coercion in Early America," in *Sex, Love, Race: Crossing Boundaries in North American History*, ed. Martha Hodes (New York: New York University Press, 1998), 141-163.

Emancipation, Citizenship, and Suffrage

- 29 Sep. Suffrage, Marriage, and Citizenship
Readings: Ellen Carol Dubois, "Outgrowing the Compact of the Fathers: Equal Rights, Woman Suffrage, and the United States Constitution, 1820-1878," *Journal of American History* 74, no. 3 (Dec. 1987): 836-862; Nancy Cott, "Marriage and Women's Citizenship in the United States, 1830-1934," *American Historical Review* 103, no. 5 (Dec. 1998): 1440-1474.
- 1 Oct. Slavery, Emancipation and Marriage
Laura F. Edwards, "'The Marriage Covenant Is at the Foundation of All Our Rights': The Politics of Slave Marriages in North Carolina after Emancipation," *Law and History Review* 14 (Spring 1996): 81-124.
- 6 Oct. Reconstruction, Sex, and Gender
Readings: Hannah Rosen, "'Not That Sort of Women': Race, Gender, and Violence During the Memphis Riot of 1866," in *Sex, Love, Race: Crossing Boundaries in North American History*, ed. Martha Hodes (New York: New York

University Press, 1998), 267-293; Martha Hodes, "The Sexualization of Reconstruction Politics: White Women and Black Men in the South after the Civil War," *Journal of the History of Sexuality* 3 (Jan. 1993): 402-417; Barbara Welke, "When All the Women Were White, and All the Blacks Were Men: Gender, Class, Race, and the Road to Plessy, 1855-1914," *Law and History Review* 13, no. 2 (Autumn 1995): 261-316.

8 Oct. Library Tutorial

The West

13 Oct. Policing Gender
Readings: Clare Sears, *Arresting Dress: Cross-Dressing, Law, and Fascination in Nineteenth-Century San Francisco* (Durham: Duke Univ. Press, 2015), 1-60.

15 Oct. Policing Sex
Readings: Pablo Mitchell, *West of Sex: Making Mexican America, 1900-1930* (Chicago: Univ. of Chicago Press, 2012), 1-59.

20 Oct. Policing Borders
Readings: George Pepper, "Forbidden Families: Emigration Experiences of Chinese Women under the Page Law, 1875-1882," *Journal of American Ethnic History* 6, no. 1 (Fall 1986): 28-46; Nayan Shah, "Between 'Oriental Depravity' and 'Natural Degenerates': Spatial Borderlands and the Making of Ordinary Americans," *American Quarterly* (Sep. 2005): 703-725.

22 Oct. Policing Families
Readings: Rose Stremlau, "'To Domesticate and Civilize Wild Indians': Allotment and the Campaign to Reform Indian Families, 1875-1887," *Journal of Family History* 30, no. 3 (Jul. 2005): 265-286.

Progressive America

27 Oct. Prostitution, Vice, and White Slavery
Readings: Brian Donovan, "The Sexual Basis of Racial Formation: Anti-Vice Activism and the Creation of the Twentieth-Century 'Color Line,'" *Ethnic and Racial Studies* 26, no. 4 (2003): 707-727; Brian Donovan and Tori Barnes-Brus, "Narratives of Sexual Consent and Coercion: Forced Prostitution Trials in Progressive-Era New York City," *Law and Social Inquiry* 36, no. 3 (Summer 2011): 597-619.

29 Oct. Gender at Work
Sybil Lipschultz, "Hours and Wages: The Gendering of Labor Standards in America," *Journal of Women's History* 8, no. 1 (Spring 1996): 114-136.

- 3 Nov. Same-Sex Sex and Desire
 Readings: Lisa Duggan, "The Trials of Alice Mitchell: Sensationalism, Sexology, and the Lesbian Subject in Turn-of-the-Century America," *Signs* 18, no. 4 (1993): 791-814; George Chauncey, "Christian Brotherhood or Sexual Perversion?: Homosexual Identities and the Construction of Sexual Boundaries in the World War 1 Era," *Journal of Social History* 19 (1985): 189-212.
- 5 Nov. Abortion and Sterilization
 Readings: Paul Lombardo, "Three Generations, No Imbeciles: New Light on *Buck v. Bell*," *New York University Law Review* 30 (April 1985): 30-62; Leslie Reagan, "'About to Meet Her Maker': Women, Doctors, Dying Declarations, and the State's Investigation of Abortion, Chicago, 1867-1940," *Journal of American History* 77, no. 4 (1991): 1240-1264.

Gender and Sexual Revolutions?

- 10 Nov. Women's Rights
 Readings: Nancy MacLean, "Women Challenge 'Jane Crow,'" in *Freedom Is Not Enough: The Opening of the American Workplace* (Cambridge: Harvard Univ. Press, 2006), 117-154; Kathleen M. Sullivan, "Constitutionalizing Women's Equality," *California Law Review* 90, no. 3 (May 2002): 735-764.
- 12 Nov. Interracial Marriage
 Readings: Peggy Pascoe, "Miscegenation Law, Court Cases, and Ideologies of 'Race' in Twentieth-Century America," *Journal of American History* 83, no. 1 (Jun. 1996): 44-69.
- 17 Nov. Sexuality and Immigration
 Readings: Margot Canaday, "'Who Is A Homosexual?': The Consolidation of Sexual Identities in Mid-Twentieth-Century American Immigration Law," *Law and Social Inquiry* 28, no. 2 (Spring 2003): 351-386; Eithne Luibheid, "Looking Like A Lesbian: The Organization of Sexual Monitoring at the U.S.-Mexico Border," *Journal of the History of Sexuality* 8, no. 3 (1998): 477-506.
- 19 Nov. The Supreme Court's Sexual Revolution?
 Readings: Marc Stein, "*Boutilier* and the U.S. Supreme Court's Sexual Revolution," *Law and History Review* 23, no. 3 (Fall 2005): 491-536; Marc Stein, "The U.S. Supreme Court's Sexual Counter-Revolution," *Organization of American Historians Magazine of History* 20, no. 2 (Mar. 2006): 21-25; Marc Stein, "Gay Rights and the Supreme Court: The Early Years," UNC Press Blog, 4 Oct. 2010, <http://uncpressblog.com/2010/10/04/gay-rights-and-the-supreme-court/>; Marc Stein, "Five Myths about *Roe v. Wade*," UNC Press Blog, 22 Jan. 2013, <http://uncpressblog.com/2013/01/22/marc-stein-five-myths-about-roe-v-wade/>.

Research Presentations

1 Dec. Student Presentations

3 Dec. Student Presentations

8 Dec. Student Presentations

10 Dec. Student Presentations