

Gender and the Law in US History

21H.225 Spring 2004

First Writing Assignment

Choose **one** of the following five assignments. Your paper (5-6 pages) is due on **Friday February 27** no later than 5:00pm. You may submit the paper in class on Monday, or by email attachment (with the suffix .doc, .pdf, or .rtf). If you send the paper by attachment, you must keep a backup paper copy and be ready to submit that if there are any computer difficulties. Extensions will be granted only in advance; computer malfunctions are never an acceptable excuse for a late submission. Adherence to standards of academic honesty is required; please exercise special care with sources found on the worldwide web. You may use any citation system that you wish (MLA parenthetical reference style, *Chicago Manual of Style*, legal citation), as long as your references are clear and complete.

1. **Coverture.** Read the following quote:

“These are the chief legal effects of marriage during the coverture; upon which we may observe, that even the disabilities, which the wife lies under, are for the most part intended for her protection and benefit. So great a favourite is the female sex of the laws of England.”

--William Blackstone, *Commentaries on the Laws of England* (1765)

Is Blackstone’s commentary an accurate description of the lived experience of law in colonial America (which, in case you’ve forgotten, was subject to “the laws of England”)? Why or why not? If you choose this topic, be sure to select your evidence carefully in order to support your argument with clear examples.

Blackstone's Commentaries

Link to searchable full text of Blackstone's Commentaries on the Laws of England, from the web site of the Yale Law School.

2. Seneca Falls. Was (or if you prefer, “Is”) the Seneca Falls Declaration of Sentiments a radical document? If you choose this topic, you may wish to go back to the Stellar site and read the short essays by Eleanor Flexner and Gerda Lerner, which were not posted in time for our discussion last week. You will probably also want to take a close look at the Declaration of Independence. However you structure the argument, be sure to define your terms.

3. Polygamy and the Constitution. Consider the following quote from Sarah Barringer Gordon in *The Mormon Question*: “the constitutional triumph of antipolygamy indirectly and implicitly undermined the constitutional power of antipolygamists, even as it eviscerated the constitutional

claims of Mormons” (p. 15). Was the resolution of the Mormon polygamy controversy a victory for religious liberty, or a defeat? Be sure to define your terms.

4. Modern Marriage Wars in Historical Perspective. Legal activist groups frequently turn to scholars for historical perspectives on contemporary issues. In the current debate over the constitutionality of same-sex marriage, very little attention has been paid to the nineteenth-century debate over Mormon marriage. Imagine that you have been called in by one of the following activist groups: the Massachusetts Freedom to Marry Coalition (<http://www.equalmarriage.org/>), the Religious Coalition for the Freedom to Marry (<http://www.rcfm.org/>), the American Family Association Center for Law and Policy (<http://www.afa.net/clp/default.asp>), or Concerned Women for America (<http://www.cwfa.org/main.asp>). What would you tell the members of the group? Can the current debate learn anything from the experiences of people in the nineteenth century? If you choose this topic, be sure to consider issues of religious liberty, morality and the constitution, and federal-state relations as well as the politics and meaning of marriage as a legal institution. (You don't have to address all of these in your paper. Just be sure to think about them as you write.) Note: if you haven't been following the news lately, you may find this topic harder than you realize.

5. Design Your Own Topic. If you would like to write a paper that involves more in-depth historical research into one of the cases or issues that we have studied in the last few weeks, you are welcome to do that, as long as you consult with me in advance. Examples could include gender in Puritan law, the legal status of widows in early America, or the relationship between law and religion in the nineteenth century.

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