

Law

Also relevant for: Law, legal training degrees, also Economic Law

Course: Law, Economic Law

Group of courses: Law, Economics and Social Sciences

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Last edit:

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Course objectives:

Students should

- be familiarised with and discuss basic questions of national and European gender policy
- learn to identify gender constructions in legislation and individual laws
- analyse deficits and undesirable developments in legislation with regard to the need for gender justice and inclusiveness
- discuss gender-stereotyped perceptions, preconceptions and prejudices in the finding, application and administration of justice
- learn about the important legislation for typical life situations and the coexistence of men and women
- learn about the possibilities and limitations of the "equality machinery", state and international institutions for creating gender justice.

Teaching content/subject-specific gender studies content:

Law in Germany has traditionally meant men's law, reflecting the realities of a society structured along patriarchal lines. Up to the 1970s, women played a subordinate role if any in law. Jurisprudence is still firmly in male hands and gender aspects are negated or ignored in standard teaching. Over the past decade, partly due to a shortening of legal training, training in legal dogmatic has become more important and there has been a clear tendency for positivism (orientation of teaching to current law and its application).

These suggestions for teaching legal gender competence adhere to ideas on critical jurisprudence or critical legal thinking.

The description is based on standard curricula. According to feminist critique of the discipline, a fundamental revision of the curricula would be necessary to bring about a different structure and weighting of degree content. Abstract theoretical interpretation of laws would play a more minor role, leaving greater scope for practice-oriented knowledge and applications. This would also remove the division between substantive law and formal procedural law. To achieve this, didactics of teaching law have to be revitalised and traditional ideas on the objectives of studying law and teaching methods have to be revisited and ultimately revised.

Basic content

The following basic information on the history of women's rights and law should be taught in the basic courses (History of Law, Sociology of Law, Philosophy of Law, Economy of Law, etc.):

How has women's legal situation developed over the centuries? Which societal ideas and political conditions formed the basis of the legislation? Which societal movements and events enabled change? This should be placed in the general context of the conditions of change in society and legislation. Important keywords for evaluating societal processes are: division of tasks and labour, economic conditions, (distributive) justice, law/injustice, violence, power, exclusion, discrimination, adjustment, dependency, subordination, social control, and control over the body.

Teaching should present and reflect the changing value systems - including changes in religious attitudes - in the light of the current discourse on ethical and moral equality and justice. The background is formed by the legal parameters, which outline the current scope of legal policy: international law conventions like CEDAW (UN Convention on the Elimination of Discrimination against Women), the European treaties, the German federal constitution, national and state equality laws and the

Antidiscrimination Act.

With regard to legal policy, the changes in the objectives of gender justice and equality that have taken place over the past three decades indicate a paradigm shift from equal rights via equal opportunities to equality and gender mainstreaming.

Broadening the dichotomous male/female perspective, taking into account the social and partly legal acceptance of different sex/gender identities, the focus should be on the individual and his or her identity, as part of the discourse on diversity and comprehensive anti-discrimination concepts.

Basics of feminist theories should be presented in this context.

The basic courses and later the different fields of law should shed light on the role of institutions and stakeholders for example the German Constitutional Court, the European Court of Justice, the European Court of Human Rights, the legislators (European Commission, German federal and state parliaments) on one hand, and lawyers, judges, politicians and scholars on the other.

The history of women's rights and law is also the history of women lawyers. We have decades of dedicated hard work by a small number of critical woman lawyers to thank for the gradual adjustment of legislation to the requirements of a modern, equality-oriented society. These women's struggle for rights should be presented in the context of the first and second women's movements, along with the institutionalisation of the women's movement (women's legal advice centres, associations of female lawyers, feminist lawyer organisations).

Female lawyers' historical and present professional situation also displays examples of mechanisms of disadvantaging women at work, which can be explained on the basis of professional and organisational sociology. This is a topical subject as more than 50% of law students are meanwhile women

Basic content also includes reflecting and learning gender-inclusive legal language.

Gender aspects in the individual areas of law

Courses on constitutional law should and usually already do go into detail on the principle of equal rights and the anti-discrimination regulations (Art. 3.2 and 3.3 of the German Basic Law). They should provide students with the ability to measure the constitutionality of individual regulations and regulation systems. Students should gain basic competence in this area.

Correspondingly, courses on European law should deal with the European values of gender order in conjunction with national labour, industrial and social law.

Courses on the individual fields of law should cover gender aspects in the historical development of the respective legal norms in detail, and put their suitability for contemporary society to question, identifying ideological backgrounds. Students must learn to ask questions that help uncover or clarify regulations' gender relevance and disparities.

These questions are, for example:

- Are women and men taken into account in the same way?
- Does the regulation benefit women and men in the same way?
- Are women and men affected in the same way?
- If not, are there rational and/or gender-related reasons for this (e.g. in criminal law)?

This approach can and should be used in all forms of legal training, i.e. also in degrees in Economic Law, which usually concentrate on industrial law, labour law, commercial law, company law, competition law, negotiable instruments law, banking law, etc. Combining feminist and economic analysis is of particular significance in this area.

Teaching staff should ensure that the examples and sample cases used are not discriminatory or construct unquestioned gender images, as is still often the case.

Both basic and specialised courses should use the analysis of appropriate judgements to illustrate how

gender-related preconceptions and prejudices can influence the outcomes of legal proceedings. Excerpts from textbooks, essays and other legal publications can be used to illustrate gender stereotypes in legal discourse and the unilateral construction and evaluation of gender in the literature.

Structural knowledge and practical relevance

As basic legal training in Germany focuses on the application of law, it divides up the individual areas of law and usually deals with law in the books rather than areas of law particularly relevant in practice. This means that important issues are neglected.

In order to deal with problems of gender justice in law, it is important to also teach basic knowledge on those areas of law that are generally only offered as optional courses, and knowledge of legal regulations that are generally marginalised, neglected or simply "not included", but which are important for evaluating gender relations on a legal basis. This means primarily family law, social law and tax law.

It is also important to create structural connections. For example, only a full overview of the regulations on financial transfer payments (pension law, health insurance, unemployment benefit, social benefits) and taxation of spouses enables students to systematically and constructively deal with women's dependency or weak financial standing in marriages and partnerships.

This example can be used to show how the law constructs or reinforces gender roles.

Departments should discuss where and how to best integrate these contents. In the introductory phase, students lack the necessary knowledge and skills to deal with the content adequately. It would be most suitable for a general unit on critical evaluation of law for advanced students (for information on the integration of gender-related content into the curriculum, see below).

Gender issues should also be included in seminars and lectures teaching key qualifications and soft skills (presentation skills, rhetoric, negotiation, mediation). Teaching should point out, for example, gender aspects in the application of law (perceptions of femininity and masculinity among those involved in proceedings, gender roles, expected behaviour, communicative behaviour) and gender-related expectations of justice, the role of the justice institutions in legal disputes and extrajudicial settlements.

Integration of gender studies content into the curriculum:

Gender is an issue across the entire discipline. It should be one focus of the degree in the basic courses (Introduction to Law, History of Law, Sociology of Law, Philosophy of Law and Methodology). In other areas, the gender perspective should be an integral element of all seminars and lectures with regard to questions of justice and critique. This applies in particular to constitutional law, European law, human rights, criminology, family law, social law, labour law, industrial law or equality issues, as gender aspects are particularly relevant in these areas. In our experience, specific seminars on the subject of women/gender and law are not well accepted. Such a seminar also harbours the risk that the gender factor might be neglected in all other courses. Provided gender aspects are sufficiently covered in basic training, there is no need for such a seminar. It makes however sense to offer an extended optional course which can be well integrated into Bachelor or even better Masters of Law as shows the gender module in the Master programme at FernUniversität in Hagen.

The question is how to make staff willing and competent to teach the relevant issues and subjects. It might help if – where necessary - staff could make use of written or online elements of other institutions.

Degree Stage:

The above content is relevant at every degree stage. In the introductory phase, students should gain general gender-sensitivity as described in the teaching objectives. At later stages, gender aspects should be covered in the respective specialised courses.

When specifying content for the new Bachelor's and Master's degrees in law, gender aspects should generally be taken into account in all courses. Gender issues should also be integrated into the established law training programmes in every subject, and taken into account in the practical stages.

Basic Literature/Recommended Reading:

Baer, Susanne: Rechtswissenschaft. In: Gender-Studien. Eine Einführung, hrsg. v. Christina von Braun und Inge Stephan. Stuttgart: Metzler 2000, S. 155

Battis, Ulrich/Schultz, Ulrike, Hrsg.: Frauen im Recht. Heidelberg: C. F. Müller 1990

Brackert, Petra/Hoffmeister-Schönfelder, Gabriele, Hrsg.: Rechtshandbuch für Frauen- und Gleichstellungsbeauftragte. Hamburg: Dashöfer, Loseblattsammlung seit 2001

Deutscher Juristinnenbund, Hrsg.: Juristinnen in Deutschland. Die Zeit von 1900 - 2003. Baden-Baden: Nomos, 4. Aufl. 2003

Gerhard, Ute, Hrsg.: Frauen in der Geschichte des Rechts. München: Beck 1997/1999

Gerhard, Ute/Limbach, Jutta, Hrsg.: Rechtsalltag von Frauen. Frankfurt M.: Suhrkamp 1988

Holzleithner, Elisabeth: Recht, Macht, Geschlecht. Legal Gender Studies. Eine Einführung. Wien: WUV Universitätsverlag 2002

Koreuber, Mechthild/Mager, Ute, Hrsg.: Recht und Geschlecht. Zwischen Gleichberechtigung, Gleichstellung und Differenz. Baden-Baden: Nomos: 2004

Kreuzer, Christine, Hrsg.: Frauen im Recht - Entwicklung und Perspektiven. Baden-Baden: Nomos 2001

Ministerium für Arbeit, Soziales, Gesundheit und Frauen Brandenburg, Hrsg.: Mit Recht und Courage. Praxisnahes Rechtswissen und Gleichstellungsarbeit. (zusammengestellt von Susanne Baer und Sabine Berghahn. Potsdam 1996

Ministerium für Gesundheit, Soziales, Frauen und Familie NRW, Hrsg.: Frauen und Recht. Reader zusammengestellt von Ulrike Schultz. Düsseldorf 2003
(<http://mgsff.projekte.boehm.de/frauen/material/frauenundrecht.pdf>)

Olsen, Francis, Hrsg.: Feminist Legal Theory. Bd. I: Foundations and Outlooks. Bd. II: Positioning Feminist Theory within the Law. Aldershot: Dartmouth 1995

Sacksofsky, Ute: Das Grundrecht auf Gleichberechtigung. Eine rechtsdogmatische Untersuchung zu Art. 3 Abs. 2

des Grundgesetzes. Baden-Baden: Nomos 2. Aufl. 1996

Schultz, Ulrike: Richten Richterinnen richtiger? In: Frauenbilder, hrsg. vom Ministerium für Gesundheit, Soziales, Frauen und Familie NRW (Reader zusammengestellt von Ulrike Schultz), Düsseldorf 2004, S. 117 (<http://mgsff.projekte.boehm.de/frauen/material/frauenbilder-reader.pdf>)

Schultz, Ulrike/Shaw, Gisela: Women in the World's Legal Professions, Oxford: Hart 2003

Schiek, Dagmar/Dieball, Heike/Horstkötter, Inge: Frauengleichstellungsgesetze des Bundes und der Länder. Frankfurt M.: Bund Verlag 2. Aufl. 2002

Gleichstellungsgesetze im Bund und in den Ländern:

<http://www.frauen-im-oeffentlichen-dienst.de/recht/gleichstellungsgesetz/1966>.

Journals:

Streit - feministische Rechtszeitschrift

Mitteilungen des Juristinnenbundes