

Preface

This is a book about gender and what law has to do with it. It touches virtually every area of life and issues that deeply affect everyone, including jobs, family, education, pay equity, reproductive rights, military service, sexual identity, sexual violence, and social justice. The book both examines what the law is and helps you think more deeply about what it should be. It could also stimulate your interest in pursuing a career in law, policy, or public service. But whatever work you choose, these readings can help you think about the life you want to lead and the legal and social changes that will make it possible.

The book has two goals. One is to survey the most significant legal and policy issues relating to gender. For each of the many topics covered, the book defines the significant issues, identifies the relevant law (often through excerpts of court cases), and provides commentary by leading academics and policymakers. For each section, notes provide details and background, “reading questions” identify key issues, definition boxes explain legal terms, and problems (“Putting Theory into Practice”) challenge you to apply legal principles to concrete, often “real-life,” situations.

The other goal of the book is to identify and compare different theoretical frameworks that will help you to think systematically (as opposed to impulsively) about gender issues. These frameworks organize the book and enable you to identify and rethink the factual and normative assumptions of your own views. Each framework offers a different “handle” on the relationship between law and gender. The formal equality perspective assumes the basic sameness of men and women and mandates that both sexes be treated identically, whatever the outcome. The substantive equality framework assumes some significant differences between men and women and urges accommodations (usually for women) in order to eliminate the negative consequences of those differences. Nonsubordination theory assumes that law is structured to make women’s subordination look natural and inevitable and seeks to expose and challenge this subordination. Difference theory looks at women’s differences from men not so much as disadvantages to be eliminated, but as models for a more just and caring society. The autonomy framework explores legal issues from the standpoint of how to provide women better, and freer, choices. Each of these frameworks intersects with other theories—intersectionality,

gender queer theory, and masculinities studies. These adjacent frameworks are explored along with a preview of each of the five frameworks in the book's introduction.

These theoretical perspectives are not mutually exclusive, nor are they "total" theories that are intended to answer every doctrinal and policy question. Rather, they represent major lenses through which to view the relationship between law and gender. We believe that each theoretical framework has significant value and limitations. The approach of this book works best if readers attempt to be both open to, and critical of, each perspective.

The book is drawn from a longer and somewhat more technical textbook designed for law school courses on law and gender: *Gender and Law: Theory, Doctrine, Commentary*, now in its ninth edition. This volume is designed for use in undergraduate courses in gender law, feminist legal theory, or related courses. Most of the sources in the book have been heavily edited. Additions to, deletions from, and other substantive alterations to quoted materials are indicated by brackets and ellipses; footnotes and citations are generally deleted without such designations. Where footnotes are retained, the original numbers are used. Paragraph breaks and the order of paragraphs are occasionally modified to make edited excerpts coherent.

Our approach to teaching law and gender is committed to multiple ways of looking at an issue. For this reason, the book is an ongoing unraveling and reweaving of interconnected designs, rather than a straight-seamed assembly of a single, finished fabric. This approach enables you to reconsider problems examined earlier in the book in light of perspectives presented later, and to keep your own mind open to views that may affect your previous judgments.

We appreciate your use of this book and welcome feedback from teachers and students. The authors are committed to helping all audiences think more critically, broadly, and deeply in their analysis of gender and law. But, like gender law more generally, the book is an ongoing work in progress. Thanks for being part of the process of keeping the field responsive to social and legal realities.

Katharine T. Bartlett
Duke University School of Law

Joanna L. Grossman
SMU Dedman School of Law

Deborah L. Brake
University of Pittsburgh School of Law

Frank Rudy Cooper
William S. Boyd School of Law at the University of Nevada, Las Vegas

July 2023