

Fall 2005

BIOETHICS, PERSONHOOD AND THE LAW

Maneesha Deckha, Assistant Professor

UNIT VALUE: 1.5

CLASS TIMES: 3:00 to 6:00 p.m., Wednesdays

LOCATION: Room 142, Fraser (Law) Building

OFFICE HOURS: You are welcome to drop by my office to see me at anytime. If you prefer, you may schedule an appointment.

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Assistant: Rosemary Garton, Room 225, Tel.: 250.721.8177

SUMMARY:

This seminar will explore the legal and ethical issues raised by medical and scientific procedures and technologies for persons (humans) and nonpersons (fetuses, embryos and nonhuman animals). In particular, we will look at how the active and absent regulation of reproductive and genetic technologies and state regulation of medical treatment impact the configuration and enjoyment of rights and shape concepts of personhood, property and humanness. Issues of equality and difference will be central to this course. The seminar will consider how medical and scientific procedures and technologies affect social hierarchies based on social constructs such as gender, race, class, and disability. The seminar will also consider if and how the law should regulate these technologies to foster equality among humans and between humans and nonhumans. Specific topics include abortion, assisted suicide and euthanasia, cloning, embryonic stem cell research, vivisection, xenotransplantation, and organ donation.

OBJECTIVES:

The objectives of this course are for you to:

1. Acquire a solid understanding of long-standing and emerging bioethics issues and the legal concepts of personhood, property, and rights that shape them;
2. Analyze, synthesize, evaluate and apply doctrine and related critical perspectives to offer cogent verbal and written analyses of bioethics issues.
3. Refine your legal and other research and writing skills.
4. Actively participate in, and thus increase, your own learning.

EVALUATION:

<p>a) Research or Integrative paper (min. of 5000 words, exclusive of other text)</p> <ul style="list-style-type: none"> You must submit a thesis paragraph to me by the beginning of class on Wednesday, October 5, 2005. This submission will not be graded, but is nonetheless required. Failure to submit the written introduction and thesis paragraph will adversely affect your grade on your paper. Due date for final paper: <u>Monday, December 12, 2005 at 10:00 a.m.</u> Papers must be submitted in hard copy and by e-mail attachment by this date and have the word count on the cover page. Unless I have authorized an extension, papers submitted after this time will be penalized at the rate of one grade point per day, including weekends. You may write your Major Research Paper for this course if you obtain written approval from me by September 23, 2005. The paper will qualify as a Major Research Paper if it is at least 7,500 words in length exclusive of other text such as footnotes, appendices and bibliography and receives a grade of C+ or better. 	75 or 65%*
PLUS	
<p>b) Presentation</p> <ul style="list-style-type: none"> You must sign up for one class in the term when you will be responsible for presenting your critical responses to that day's readings to the class and thus leading the discussion. The presentation is an opportunity for you to present a critical analysis of the readings - the arguments you found weak or convincing, the proposals that resonated, and/or other thoughts – rather than description. It should include a set of written discussion questions to propose to the class and interactive exercise. You may assume that everyone has completed the readings. Your presentation, including time for group interaction and discussion, should last between 60 and 75 minutes. You will be assessed on the quality of your clarity, analysis, engagement with the materials, discussion questions and interactive exercise, creativity and overall style and organization. 	25 or 15%*
<p>*If your grade for your presentation is higher than the grade for your paper it will be worth 25%; if it is even or lower it will be worth 15%.</p>	
PLUS	
<p>c) Journal Entries/Critical Responses</p> <ul style="list-style-type: none"> For any four weeks for which you are not signed up to do a presentation (you choose which weeks) you must hand in a minimum 300-word reflection related to that week's readings. These are due at the beginning of class for that week. The reflection may take the form of a diary or journal entry or a more traditional academic critical response. The requirement in either case is that you express your response to the week's readings and any related personal experience you wish to draw from and incorporate. The responses will not be graded, although the quality of the entries/responses, if high, may be considered to your benefit to raise your overall grade if you are on the border line between grade point values. Completion of all responses will count for 10% of the final grade. Failure to complete all journal entries/critical responses will result in a lower grade at the rate of -2.5% of the final grade for each one missed. 	10%

Based on these components, you will be assigned a final letter grade for the seminar. The equivalencies are:

Numerical %	<u>Letter Grade</u>	<u>Grade Point Value</u>
90+	A+	9
85 – 89	A	8
80 – 84	A-	7
75 – 79	B+	6
70 – 74	B	5
65 – 69	B-	4
60 – 64	C+	3
55 – 59	C	2
50 – 54	D	1
0 - 49	F (Failing Grade)	0

Absences:

As our seminar meets only once per week and is also highly interactive attendance is critical for successful participation in the class. Except in the case of illness or personal emergency, if more than one class is missed, you are expected to circulate an additional entry or critical response described above for the week's readings for each class missed. The additional entry/response is due to me by the end of the day on which class was missed. I will then circulate all or part of it to the class. Failure to provide this written entry/response will result in a lower grade at the rate of -2% of the final grade for each class missed.

REQUIRED MATERIALS:

The seminar materials are available at the Course Distribution Centre. I may also distribute handouts and refer you to other sources to access statutes or other materials.

TEACHING METHODOLOGY:

This is a seminar. One of the main advantages of a seminar with limited enrolment is the increased opportunity to interact and engage with each other's ideas and insights. Accordingly, class time will consist of discussion, small group work and other interactive and reflective exercises, with limited lectures. You are expected to complete your readings and any other preparatory assignments before the start of class and to actively participate in class.

SYLLABUS:

September 7

1. INTRODUCTION

T. Murphy & G. White, “Dead Sperm Donors or World Hunger: Are Bioethicists Studying the Right Stuff?” (2005) 35:2 Hastings Center Report 49.

M. Yesley, “What’s in a Name? Bioethics – and Humans Rights – at UNESCO” (2005) 35:2 Hastings Center Report 8.

S. Wolf, “Erasing Difference: Race, Ethnicity, and Gender in Bioethics” in A. Donchin & L. M. Purdy, *Embodying Bioethics: Recent Feminist Advances* (Lanham, MD: Rowman & Littlefield Publishers, 1999) 65.

C. Stone, “‘Should Trees Have Standing?’ Revisited: How Far Will Law and Morals Reach? A Pluralist Perspective” (1985-86) 59 S. Cal. L. Rev. 1.

Assisted Human Reproduction Act, R.S.C. 2004 c. 2.

C. Rasmussen, “Canada’s Assisted Human Reproduction Act: Is it Scientific Censorship, or a Reasoned Approach to the Regulation of Rapidly Emerging Reproductive Technologies?” (2004) 67 Sask. L. Rev 97 ¶ 70 – 88.

Recommended Reading:

“Embryos and the Law” *Globe and Mail* (30 October 2003) (WL).

September 14

2. EMBRYOS AND FETUSES

a) Abortion

R. v. Morgentaler, [1988] 1 S.C.R. 30.

M.G. Fried ed., “Abortion and Sterilization in the Third World” in *From Abortion to Reproductive Freedom: Transforming a Movement* (Boston: South End Press, 1990) 63.

J. J. Thomson, “A Defense of Abortion” in J. Feinberg ed., *The Problem of Abortion*, 2nd ed. (Belmont, CA: Wadsworth, 1983) 173.

J. English, “Abortion and the Concept of a Person” in Joel Feinberg, ed., *The Problem of Abortion*, 2nd ed. (Belmont, CA: Wadsworth Publishing Co., 1984) 151.

September 21

J. Williams & S. Shames, "Mother's Dreams: Abortion and the High Price of Motherhood" (2003-04) 6 U. Pa. J. Const. L. 818.

Winnipeg Child And Family Services (Northwest Area) v. G. (D.F.), [1997] S.C.J. No. 96.

Alan Freeman "Stakes high as Bush moves to reshape top court" *Globe and Mail* (20 July 2005) (WL).

Recommended Reading:

D. Ginn, "The Supreme Court of Canada Rules on Coercive State Intervention in Pregnancy"(1999) 19:1-2 Canadian Women Studies 122.

September 28

b) Embryonic Stem Cell Research

R. Weiss, "The Powder to Divide" (2005) 208:1 National Geographic 2.

S. Bent, "Under the Microscope" (2005) 19:13 The Scientist 22.

J. Dolgin, "Embryonic Discourse: Abortion, Stem Cells and Cloning" (2004) 19 Issues L. & Med. 203 at 203-16, 240-46, 253-61

A. Campbell, "Ethos and Economics: Examining the Rationale Underlying Stem Cell and Cloning Research Policies in the United States, Germany and Japan" (2005) 31 Am. J.L. and Med. 47.

A.S. Darr & L. Shermeta, "The Science of Stem Cells: Some Implications for Law and Policy" (2002) 11:1 Health L. Rev. 5.

P. Lauritzen, "Stem Cells, Biotechnology and Human Rights" (2005) 35:2 Hastings Center Report 25.

Recommended Reading:

P. Singer & A. Daar "We should clone this U.K. Policy" *Globe and Mail* (12 August 2004) (WL).

M. Sommerville "Cloning questions" *Globe and Mail* (16 August 2004) (WL).
"Faith and stem cells" *Globe and Mail* (4 November 2004) (WL).

A. Pollack "Moving Stem Cells Front and Center" *New York Times* (23 February 2005) (Lexis).

- “Cloning’s promise” *Globe and Mail* (13 August 2004) (WL).
- “Open the doors wide to stem-cell research” *Globe and Mail* (30 July 2004) (WL).
- E. Cary “‘Bad ethics’ or only hope?; Controversy over breeding babies to save siblings” *Toronto Star* (17 May 2004) (WL).
- O. Ward “Message in a test tube; Science and religion on collision course” *Toronto Star* (15 May 2004) (WL).
- “Islamic Scholars Wade into Debate on Stem Cells,” *Globe and Mail*, June 13, 2002.
- “A Clone by Any Other Name,” *Globe and Mail*, May 15, 2002.
- “New Bill Backs Stem-cell Research,” *Toronto Star*, May 10, 2002.
- “MPs Have the Wrong Focus,” *Globe and Mail*, May 2, 2002.
- “Ethics under Microscope,” *Toronto Star*, March 9, 2002.
- “Cloning Could Prove Hard to Resist,” *Toronto Star*, December 1, 2001.
- “Cloning Replicates Bad Ethics,” *Globe and Mail*, November 28, 2001.
- “A Theologian Defends Cloning,” *Globe and Mail*, November 27, 2001.
- “There’s No Way to Escape the Ethical Debate,” *Globe and Mail*, November 27, 2001.

October 5

3. (NONHUMAN) ANIMALS

a) Introduction to Animal Rights

D. Haraway, “Otherworldly Conversations” in *The Haraway Reader* (New York: Routledge, 2004) 139.

M. Pollan, “An Animal’s Place,” *New York Times Magazine*, November 10, 2002.

C.J. Adams, “Caring About Suffering: A Feminist Exploration” in C.J. Adams and J. Donovan (eds.), *Beyond Animal Rights: A Feminist Caring Ethic for the Treatment of Animals* (New York: Continuum, 1996).

b) Introduction to Animals and the Law

G. L. Francione, “The Dominion of Humans over Animals, the ‘Defects’ of Animals, and the Common Law” in G. L. Francione, *Animals, Property, and the Law* (Philadelphia: Temple University Press, 1995) 33.

J. Motavalli, “Rights from Wrongs” *E Magazine* (March/April 2003) 26.

October 12

Criminal Code, ss. 446 and 447.

R. v. Menard (1978), 43 C.C.C. (2d) 456 (Q.C.A.).

Bill C-50, *An Act to amend the Criminal Code in respect of cruelty to animals*, 1st Sess., 38th Parl., 2005.

Bill S-24, *An Act to amend the Criminal Code (cruelty to animals)*, 1st Sess., 38th Parl., 2005.

L. Letourneau, "Toward Animal Liberation? The New Anti-Cruelty Provisions in Canada and Their Impact on the Status of Animals" (2003) 40:4 *Alta. L. Rev.* 1041.

Recommended Reading:

S. Wise, "Dismantling the Barriers to Legal Rights for Nonhuman Animals" (2001) 7 *Animal L.* 9.

c) Vivisection and Medical Research

C. Montgomery, "Research: Keeping Humans Alive" in *Blood Relations: Animals, Humans and Politics* (Toronto: Between the Lines, 2000) 80.

R. Taylor, "A Step at a Time: New Zealand's Progress Toward Hominid Rights" (2001) 7 *Animal L.* 35.

Recommended Reading:

National Anti-Vivisection Soc'y v. Inland Revenue Comm'rs, [1948] App. Cas. 31 (H.L.).
A. Maehle and U. Tröhler, "Animal Experimentation from Antiquity to the End of the Eighteenth Century: Attitudes and Arguments" in N. Rupke (ed.), *Vivisection in Historical Perspective* (London: Routledge, 1987) 14.

d) Patenting

W.A. Adams, "The Myth of Ethical Neutrality" (2003) 39 *Can. Bus. L.J.* 181, 181-83, 194-213.

Recommended Reading:

Harvard College v. Canada (Commissioner of Patents), (2002) S.C.C. 76.

October 19

e) Animal Cloning, Transgenics and Xenotransplantation

R. Bratspies, "Glowing in the Dark: How America's First Transgenic Animal Escaped Regulation" (2005) 6 *Minn. J.L. Sci. & Tech.* 457.

J. Shreeve "I, Chimera" *New Scientist* (25 June 2005).

N. Kopinski, "Human-Nonhuman Chimeras: A Regulatory Proposal on the Blurring of Species Lines" (2004) 45 *B.C. L. Rev.* 619.

J. Ingram "Human-ape Mind Meld Tests Morals" *Toronto Star* (16 July 2005).

R. Corbey, *The Metaphysics of Apes: Negotiating the Animal-Human Boundary* (Cambridge: Cambridge University Press, 2005) 145-48, 168-77.

F. Bach, A.J. Ivinson and H.E. Weeramantry, "Ethical and Legal Issues in Technology: Xenotransplantation" (2001) 27 *Am. J. L. and Med.* 283.

Recommended Reading:

S. Ratner, "Baa, Baa, Cloned Sheep, Have You Any Law? Legislative Responses to Animal Cloning in the European Union and United States" (1999) 22 *B.C. Int'l and Comp. L. Rev.* 141.

"A Clone in Sheep's Clothing," *Scientific American*, March 3, 1997.

"Cloning Noah's Ark," *Scientific American*, November 19, 2000.

J. Nisker "Neither Dolly nor Polly" *Globe and Mail* (10 June 2005) (WL).

M. Somerville "Cloning questions" *Globe and Mail* (7 June 2005) (WL).

T. Caulfield "Too heavy a hand on science" *Globe and Mail* (3 June 2005) (WL).

"Ethics and cloning not incompatible" *Toronto Star* (24 May 2005) (WL).

A.E. Samson "Donors need defenders" *Globe and Mail* (9 March 2004) (WL).

"Scientists Find Snag to Cloning of Humans," *Toronto Star*, April 11, 2003.

"Endangered Species Cloned in Scientific First," *Toronto Star*, April 8, 2003.

"Goodbye, Dolly: Cloned Sheep Buys the Farm," *Toronto Star*, February 15, 2003.

"Bringing Animals back from the Brink," *Globe and Mail*, March 4, 2003.

"Cloned Cows Mean Better Milk," *Toronto Star*, January 27, 2003.

"Cat Charities Condemn Cloning," *AgBiotechNet*, July 31, 2003.

"Carbon-copy Clone is the Real Thing," 295 *Science*, February 22, 2002.

October 26

4. HUMANS¹

a) Introduction

R. Rao, "Property, Privacy, and the Human Body" (2000) 80 B.U.L. Review 359.

b) Eugenics - Old and New?

Buck v. Bell, (1927) 274 U.S. 200 (S.C).

A. Davis, "Racism, Birth Control and Reproductive Rights" in R. Lewis & S. Mills, eds., *Feminist Postcolonial Theory: A Reader* (New York, Routledge, 2003) 353.

Re Eve (1986), 31 D.L.R. (4th) 1.

November 2

K. Grant, "Prenatal Diagnosis" in B. Singh Bolaria & Harley Dickinson, eds., *Health, Illness and Health Care in Canada* 2nd ed. (Toronto: Harcourt Brace, 1994) 370.

A. Asch, "Why I Haven't Changed My Mind About Prenatal Diagnosis: Reflections and Refinements" in E. Parens & A. Asch, eds., *Prenatal Testing and Disability Rights* (Washington, DC: Georgetown University Press, 2000) 234.

H.M. Johnson, "Unspeakable Conversations" *New York Times Magazine* (16 February 2003) (Lexis).

Recommended Reading:

- A. McLaren, "The Creation of a Haven for 'Human Thoroughbreds': The Sterilization of the Feeble-Minded and the Mentally Ill in British Columbia" (1986) LXVII:2 *Canadian Historical Review* 129.
- S. Wildeman & J. Downie, "Screening of Newborns for Genetic and Metabolic Disorders: The Issue of Parental Choice" (2001) 2:3 *ISUMA* 56.
- A. Mitchell "Profile: Gauvin McCullough" *Globe and Mail* (13 April 2002) (WL).
- D. Newman, "An Examination of Saskatchewan Law on the Sterilization of Persons with Mental Disabilities" (1999), 62 *Sask. L. Rev.* 32

¹ The organization of this volume of the materials, particularly the Eugenics and Non-Voluntary Sterilization, Human Cloning and Commodification sections, draw to some extent in structure and content from the materials used by Prof. Harold Edgar in his Genetics and the Law seminar taught in Fall 2001 at Columbia Law School.

November 9

c) Assisted Suicide and Euthanasia

Rodriguez v. British Columbia (Attorney General), [1993] 3 S.C.R. 519.

A. Liptak “Ruling upholds law authorizing assisted suicide” *New York Times* (27 May 2004) (Lexis).

J. Wolfson *et al.*, “Essays: The Schiavo Case” (2005) 35:3 *Hastings Center Report* 16.

R. v. Latimer, [2001] 1 S.C.R. 3. [For facts.]

R. v. Latimer, 99 C.C.C. (3d) 481 (Sask. C.A.), rev’d 112 C.C.C. (3d) 193 (S.C.C.).

J. Downie, “A Feminist Analysis of Issues Around Assisted Death” (1996) 15 *St. Louis Public L. Rev.* 303.

November 16

d) Human Reproductive Cloning

T. Caulfield, “Clones, Controversy, and Criminal Law: A Comment on the Proposal for Legislation Governing Assisted Human Reproduction” (2001) 39 *Alberta L. Rev.* 335.

L. R. Kass, “The Wisdom of Repugnance: Why We Should Ban the Cloning of Humans” *The New Republic* (2 June 1997) 17-26.

Y.M. Shikai, “Don’t Be Swept Away By Mass Hysteria: The Benefits of Human Reproductive Cloning and its Future” (2003-04) 33 *Sw. U. L. Rev.* 259

“U.N. Splits over Full or Partial Cloning Ban,” 298 *Science*, November 15, 2002.

November 23

e) Organ Donation

M. Goodwin, “Altruism’s Limits: Law, Capacity, and Organ Commodification” (2004) 56:2 *Rutgers L. Rev.* 307,307-329, 358-381, 395-404

J.M. Appel, “Organ Solicitation on the Internet: Every Man for Himself” (2005) 35:3 *Hastings Center Report* 14.

Recommended Reading:

N. Adams, “Creating Clones, Kids & Chimera: Liberal Democratic Compromise at the Crossroads” (2004) 20 *Issues L. & Med.* 3.

L. Priest, “Developer gets transplant: Boss gets organ from domestic” *Globe and Mail*, (16 November 2002) (WL).