

Women's Studies Program
Women's Studies – Law and Feminism in Canada
WST 420

HC 2-38/M 14:00-16:50

Professor Lise Gotell

Office: 1-02e Assiniboia
Ph: 492-0326

Hours: Mon 10:30-12 [or by appt.]
email: lise.gotell@ualberta.ca

**“Policy about course outlines can be found in s.24.3 of the University *Calendar*.”
 (GFC 29 SEP 2003).**

Course Description:

Law has been a powerful force in the construction of women's subordination. It has also been a site of feminist struggle. This course considers the implications of the Charter for feminist legal struggles. Through the course, the students will gain knowledge of key Charter cases and of the role of legal strategy in an era of neoliberal governance. The experiences of racialized women, poor women and sexual minorities will be highlighted to demonstrate the problems of essentialism in feminist legal theory and strategy. The course builds upon the rich insights offered by feminist cross-disciplinary legal scholarship, highlighting how the law constructs and regulates women's bodies and sexualities, how the law has silenced and/or appropriated feminist discourse and how the rhetoric of rights is both empowering and problematic for feminist politics.

The first part of the course will explore contending feminist theoretical analyses of law. Next we will examine the potentials and perils of feminist legal strategies, focusing on Charter equality litigation and neoliberalism. The final part of the course will emphasize the role of legal discourse in constructing gendered and racialized identities through discussions of the legal regulation of reproduction, of coercive sexuality, of prostitution and of compulsory heterosexuality.

Course Requirements:

Participation/Attendance	10%
Critical Reading Response	10%
Research Paper Abstract (Feb 9)	15%
Conference Talk (Mar 9 or 16)	5%
Research Paper (Mar 30)	30%
Final Exam	30%

Course Materials:

The course materials are designed to help students economize by using, wherever possible, recent journal articles available to University of Alberta students and staff on library system database.

1. *Ejournal articles* will be available through the library's ereserve system:
<http://www.library.ualberta.ca/reserveroom/index.cfm>

2. *Additional articles* available at in a box outside WST Lounge 1-05 Assiniboia for you to borrow and copy. There are 4 copies of each reading. You should borrow the article, copy it, and return and re-file it immediately.

Assignments: Details

Participation [10%]:

Class participation includes regular attendance, respectful listening and informed participation. This is a seminar course and students are expected to be well prepared to discuss readings. You will also find that regular attendance is necessary in order to contextualize readings and issues and, therefore, to do well on the final exam.

Critical Reading Response [10%]:

Hardcopy due in class at 2:00 p.m. on assigned days; electronic copy to be submitted to class blog by 5 p.m. Sunday (the day before)

Each student will briefly present their response to one of the assigned readings. For your reading response, write a 400-500 word (approx. 1.5-2 pages) paper, excluding title page and references, in which you:

- 1) briefly summarize;
- 2) critically analyze at least one of the author's arguments;
- 3) outline at least one question that prompts critical analysis/discussion.

Situate your critique and questions in the context of the week's readings and other course materials. Be creative: explore gaps in the author's argument, multiple and/or contradictory issues raised by the reading; or, examine how the reading challenges/aligns with previous readings.

You have a maximum of 5 minutes in class to present your response. Assume that your classmates have completed the reading and read your short paper; focus on outlining your analysis and discussion questions.

Reading responses will be presented at each class and will also be shared with the class on the class blog. You need to post your paper by 5 p.m. on the Sunday before you present. **Please do not put your student ID#, or any other personal information, on your posted reading response. Please see the attached sheet for details on the class blog.**

Research Paper: Abstract [15%], Conference Talk [5%], Paper [30%]

By breaking the research assignment for the course into stages, students will get an early start and will have many opportunities for feedback.

You are required to define and research a topic related to the feminism and law. Your research may explore in more depth a topic we cover in the course. It may also analyze one of the myriad of issues that is not covered.

There are four library databases that will be useful in your research:

- *LawSource*: a Canadian legal database with full text law journal articles and cases.
- *Quicklaw*: a Canadian legal database with full text law journal articles and cases.
- *Hein-On-Line*: an American legal database with full text law journal articles, including Canadian, US and UK journals.
- *Academic Search Complete*: an interdisciplinary database with good coverage of feminist journals and full text articles.

After completing preliminary research, **write a 600 word abstract of your research paper** defining the title and topic, the objective of the paper, theoretical perspectives employed, the central argument and the manner in which you intend to proceed with your analysis. Attach a bibliography. You must use at least 2 readings from course outline and at least 8 academic sources not on the course outline – please note web materials can be used in addition to these 10 academic sources). Submit to conference organizer [me] by **Feb. 9**.

I will organize papers into panels and provide you with feedback on your proposed research.

You are to present your draft paper in our Law and Feminism Student Conference held in class on **Mar. 9&16**. **Each panel member will have no more than ten minutes to summarize the arguments and findings of their research.**

After each panel, there will be time for discussion, critiques and comments and I will provide you with written feedback.

Using insights raised in my response to your abstract and in conference discussions to deepen your analysis, write a **10-12 page paper**. **Research papers are due in class Mar 30.**

- Length: 10-12 pages typed, double-spaced (lengthy indented quotes, single spaced), 12 point Times New Roman, 1.25" top and bottom margins, 1" left and right margins. ***The body of your essay (excluding title page and bibliography) should be 10-12 pages.***
- Type: argumentative; develop and support a thesis.
- Reference Style: MLA or APA with bibliography.
- Sources: use course materials and at least 10 other academic sources (books, articles or cases) in completing this research essay. Materials from the web can be used ***in addition*** to these 10 academic sources.

Penalties for Late Assignments:

Extensions need to be arranged at least one week in advance. Late assignments will be penalized 5% per day (without a doctor's note or some other documented reason). Late papers, without a documented reason or an advance extension, will receive grades

but no comments. Papers will not be accepted by email without permission. Late papers can be handed in to me or to 13-15 Tory, where they will be date stamped.

Papers will be graded using the following criteria:

- Did it address all requirements of the assignment?
- Was the material presented clearly and coherently?
- Were arguments well supported and defended?
- Was good use made of sources?
- Was the paper referenced in a consistent manner?
- Was the approach used innovative?
- Was attention paid to style: sentence structure; paragraph structure; grammar; spelling?

Women's Studies Program Grading Scale

Excellent	A+	94-100%
	A	88-93%
	A-	82-87%
Good	B+	78-81%
	B	74-77%
	B-	70-73%
Satisfactory	C+	66-69%
	C	62-65%
	C-	58-61%
Poor	D+	54-57%
Minimal Pass	D	50-53%
Fail	F	0-49%

Academic Honesty:

“The University of Alberta is committed to the highest standards of academic integrity and honesty. Students are expected to be familiar with these standards regarding academic honesty and to uphold the policies of the University in this respect. Students are particularly urged to familiarize themselves with the provisions of the Code of Student Behaviour (online at www.ualberta.ca/secretariat/appeals.htm) and avoid any behaviour which could potentially result in suspicions of cheating, plagiarism, misrepresentation of facts and/or participation in an offence. Academic dishonesty is a serious offence and can result in suspension or expulsion from the University.” (GFC 29 SEP 2003)

In this course, plagiarism will be treated seriously. As the University of Alberta Code of Student Behaviour states,

No student shall represent another's substantial editorial or compositional assistance on an assignment as their own.

No student shall submit in any course or program of study, without the written approval of the course instructor, all or a substantial portion of any academic writing, essay, thesis, research report, project assignment, presentation or poster for which credit has been obtained by the Student or which has been or is being submitted by the Student in another course or program of student in the University or elsewhere.

No Student shall submit the words, ideas, images or data of another person as the Student's own in any academic writing, essay, thesis, project, assignment, presentation or poster in a course or program of study.

Online resources at the University of Alberta can help you to avoid plagiarism. A useful resource is the Truth in Education website.

<http://www.ualberta.ca/studentservices/tie>

Seminar Schedule:

Jan 5 Introduction to the Course/Law's View of Itself

Jan 12 Interrogating Law's "Impartiality": Bias, Gender and Race

- Ngaire Naffine, "Blind Justice," copies in Assiniboia.
- Constance Backhouse, "The Chilly Climate and Women Judges: Reflections on the Backlash from the Ewanchuk Case," *Canadian Journal of Women and the Law* (2003) v. 15, 167-193.
- Constance Backhouse, "Bias in Canadian Law: A Lopsided Precipice," *Canadian Journal of Women and the Law* (1998) v.10, 170-183.

Questions: In this class, we will interrogate law's view of itself as an objective, impartial, neutral and authoritative mechanism for resolving social conflicts. How does this official view of law function to conceal the actual social content of law? Is legal impartiality possible? What are the flaws and limitations of the liberal feminist approach focused on removing "bias" from law? How is it that sexism and anti-sexism, and racism and anti-racism come to be seen as "two peas in a pod," both sides viewed as equally threatening to legal impartiality? What are the problems with the Supreme Court of Canada's approach to "reasonable apprehension of bias" in *R.D.S.*?

Jan 19 Feminist Litigation and Reassessing the Feminist Theoretical Project in Law

- Gotell, "Towards a Democratic Practice of Feminist Litigation: LEAF's Changing Approach to Charter Equality," copies in Assiniboia.

- Joanne Conaghan, “Reassessing the Feminist Theoretical Project in Law,” *Journal of Law and Society* (2000) v.27, 351-385.

Questions: Does engaging with law create a strong tendency towards gender essentialism in feminist legal theory and practice? What problems arise when feminist litigation proceeds from an assertion of women’s shared experience of subordination? Why does Conaghan argue for a return to “women-centredness” in feminist legal theory and strategy? Is it important to acknowledge the constructedness of gender and law’s role in constructing gender, while at the same time remaining attentive to material inequalities and disadvantage?

Jan 26 Equality: Substantive and Formal

- Nitya Iyer, “Categorical Denials: Equality Rights and the Shaping of Social Identity,” *Queen’s Law Journal* (1993-1994) v. 19, 179-208.
- Gwen Brodsky and Shelagh Day, “Beyond the Social and Economic Rights Debate: Substantive Equality Speaks to Poverty,” *Canadian Journal of Women and the Law* (2002) v. 14, 186-220 (read especially pp. 204-214 this week).
- Catherine MacKinnon, “Sex Equality: On Difference and Dominance,” copies in Assiniboia.”

Questions: In this class we will explore the dominant liberal model of equality and feminist arguments for substantive equality approaches. Critically analyze the dominant liberal approach to equality. What are the problems with a categorical model of antidiscrimination law? What are the problems with the “similarly situated test”? How does formal equality reinforce a masculine norm? How have feminists sought to transcend this model through developing a substantive approach to equality? What conceptions of equality have marked the recent judicial interpretation of equality under the *Charter*?

Feb 2 Neo-Liberalism, Law and the Privatization of Social Reproduction

- Brenda Cossman, “Family Feuds: Neo-Liberal and Neo-Conservative Visions of the Reprivatization Project,” copies in Assiniboia.
- Dorothy Chunn and Shelley Gavigan, “From Welfare Fraud to Welfare as Fraud,” copies in Assiniboia.

Questions: In analyzing feminist legal strategies in the present, it is necessary to contextualize law within neoliberalism. The embrace of neoliberalism as a governing strategy poses challenges for feminist legal and political strategies. Under a neoliberal state form, social programs and reformed and reduced, systemic power relations are occluded and citizenship is transformed. Cossman analyzes the role of law in pushing forward neoliberal governance through the intensification of private familial responsibility and the “privatization of social reproduction.” Chunn and Gavigan analyze the erosion of social citizenship and the individualization and criminalization of poverty. Discuss.

Feb 9 Abstract Due Equality Rights in Neoliberal Times

- Read Brodsky and Day from Jan 26

- Christine Boyle et. al, "Case Commentaries: A UBC Forum," Canadian Journal of Women and the Law (2004) v. 16, 386-418 (read Efrat Arbel, "Newfoundland (Treasury Board) v. Newfoundland Association of Public Employees (N.A.P.E.)," pp. 393-397 and Margot Young, "Equality at a Standstill," pp. 414-418).
- Margot Young, "Why Rights Now? Law and Desperation," copies in Assiniboia *Questions*: Recent equality rights decisions demonstrate a judicially sanctioned trade-off between budgets and equality. Judicial interpretations of equality have reinforced neo-liberal (re)privatization and construct ideal neoliberal citizens as self-regulating and responsabilized. Given these trends, is it likely that equality rights litigation can be used by feminists to combat the erosion of social justice that has occurred with the ascendance of neo-liberalism?

Feb 16 Reading Week

Feb 23 Law, Reproductive Autonomy and Fetal Harm

- Vera J. Roy, "The Erasure of Ms. G.: The Cultural Specificity of Substance Abuse and Adjudication without Imagination," Canadian Journal of Law and Society (2005) v. 20, 107-138.
- Vicki Toscano, "Misguided Retribution: Criminalization of Pregnant Women Who Take Drugs," Social and Legal Studies (2005) v. 14, 359-386.

Questions: Enforced treatment of pregnant women who abuse drugs and/or the criminalization drug use while pregnant rest on a legal conception of fetus as an independent rights bearing person, reinforce women's individual responsibility for fetal harm, and ignore sources of fetal harm other than pregnant women's behavior. While a "victory" from the standpoint of women's rights, *G (D.F)* nonetheless illustrates the flaws of a liberal legal paradigm built upon personhood, individuation and rights-based analysis. The decision also demonstrates how law decontextualizes, abstracting Ms. G. from her social context, ignoring her experience of drug abuse as an aboriginal women, an experience that as Roy emphasizes, is rooted in the historical effects of colonization and informed by law. Discuss.

Mar 2 The Raped Woman and Neoliberal Sexual Citizenship

- Gotell, "The Discursive Disappearance of Sexualized Violence," copies in Assiniboia.
- Elizabeth Comack and Tracey Peter, 'How the Criminal Justice System Responds to Sexual Assault Survivors: The Slippage between 'Responsibilization' and 'Blaming the Victim,' Canadian Journal of Women and the Law (2005) v. 17, 284-209.

Questions: Despite progressive law reforms aimed at improving complainants' experiences at trial, law continues to construct a distinction between good victims and unworthy/hysterical complainants. Attacking a complainant's credibility through cross-examination on sexual history and through seeking access to her personal records remains important mechanisms for disqualifying women's claims. The hesitant embrace of a specific consent standard, while positive, has further entrenched an individualized construction of sexual violence and led to the responsabilization of victims. Gotell analyses the recent legal treatment of sexual assault at a macro-level, while Comack and

Peter, in a powerful article, explore how law disqualifies claims of sexual assault and hystericizes complainants through telling one woman's story. Discuss.

Mar 9 *Class Conference*

Mar 16 *Class Conference*

Mar 23 **Prostitution and Sex Work**

- Jill Prenger, "Treat Prostitutes as Equal Canadians: A Case for Decriminalization and Federal Regulation," *Criminal Reports* (2003) 6th at 47.
- Elaine Craig, "Re-Interpreting the Criminal Regulation of Sex Work in Light of *R. v. Labaye*," *Canadian Criminal Law Review* (2008) v. 12, 327-351.
- Leslie Ann Jeffrey and Gayle MacDonald, "Sex and Politics: Responding to Sex Workers," copies in Assiniboia.

Questions: Prenger illustrates how the current legal regime regulating prostitution increases the vulnerability of sex workers and excludes them from the criminal justice system. Despite the fact that laws prohibiting "bawdy houses" and communication for the purposes of prostitution are rooted in a conservative moral framework, feminists remain deeply divided on an appropriate legal response. Jeffrey and MacDonald argue that sex workers, and in particular marginalized sex workers, have remained objectified in debates about law and sex work. They advance a "sex worker driven" policy framework that begins with decriminalization. Given political resistance to decriminalization, how might *Labaye* influence the manner in which the communication and bawdy house provisions are interpreted?

Mar 30 *Essay Due*

Conflicts in Feminism: Trans Inclusion, Women-Only Space and the Resort to Law

- Chambers, Lori. "Unprincipled Exclusions: Transgender Jurisprudence, Feminist Theory and Kimberly Nixon." *Canadian Journal of Women and the Law* (2007) v. 19, 305-334.
- Gotell, Lise, "On Denunciations and Disavowals: Feminism, Trans Inclusion and Nixon v. Vancouver Rape Relief," forthcoming, (will be made available electronically).

Questions: In this class, we will consider the controversial case of *Nixon v. Vancouver Rape Relief*, dealing with a trans woman's human rights claim against VRR, a radical feminist rape crisis centre. Chambers is harshly critical of VRR's essentialist and exclusionary "women-only" position; she contends that human rights law must recognize the right to determine one's gender, that VRR's exclusion of Nixon should be seen in law as constituting discrimination and that the category "woman" should be irrelevant to feminist organizing. Gotell, while supportive of trans inclusion and critical of VRR, raises questions about the nature of Nixon's claim and the problems of appealing to law to resolve politically fraught conflicts, especially in a context in which feminist antiviolence work is increasingly delegitimized. What are the potential benefits and

problems of appealing to law settle conflicts within feminism? Is it time to dispense with the category woman as the basis for feminist legal and political strategies?

Apr 6 Same Sex Marriage: The Final Frontier of Lesbian Rights?

- Claire Young and Susan Boyd, ““Losing the Feminist Voice? Debates on the Legal Recognition of Same Sex Partnerships in Canada,” *Feminist Legal Studies* (2006) v. 14, v. 6, 213-240.
- Brenda Cossman, “Sexing Citizenship, Privatizing Sex,” *Citizenship Studies* (2002), 167-217.

Question: The legal challenge to heterosexual marriage does demonstrate the state’s role in reproducing heterosexuality, but is it the final frontier of lesbian rights? How are lesbians constructed by advocates? Is it true that a feminist critical perspective on marriage and the family was silenced in the struggles for same sex marriage? What are the risks of embedding of a domesticated construction of lesbians in law (assimilation, privatization, desexualization)? What are alternatives?

Final Exam in Exam Period

Women’s Studies 420 Class Blog <http://womensstudies420.blogspot.com>

The Women’s Studies 420 Class Blog is an online forum for scholarly exchange and discussion about the course materials. You will post your Critical Reading Responses to the blog, so that classmates can review responses and contribute to in-class discussion. You can also use the class blog as a forum in which to discuss and explore course materials.

Getting set up on the blog – Once you have given me your email address, you need to go through the following steps to get set up on the class blog:

- You will receive an email inviting you to contribute to the blog. Click on the link in the email to accept the invitation.
- If you do not have a Google account, you will then have to set one up:
 - Your Username has to be the same email address to which your invitation was sent
 - Your Password can be anything you want
- Once this is set up, go to <http://womensstudies420.blogspot.com>
- Enter your username and password, and click on ‘Sign In’

Posting to the blog

- Go to <http://womensstudies420.blogspot.com> and sign in
- Click on ‘New post’
- Type in the title of your post For Critical Reading Responses, use the author’s name or article title **so that your classmates can easily find your reading response.**
- Under the ‘Compose’ tab, type in the material you wish to post; or, cut and paste material from another file.
- You can preview your post before publishing it to the class blog by selecting ‘preview’ on the “Compose’ tab.
- To publish your post to the class blog, go to the bottom of the page and click on ‘Publish Post’

- If your post was published, you will then see a new page that says ‘Your blog post published successfully’.
- You can then view the blog, edit your post(s) or create a new post.
- To exit the class blog, click on ‘Sign Out’ at the top right corner of the page.

Reading the blog

- Go to <http://womensstudies420.blogspot.com> and sign in
- On the left-hand side of page, posts are listed by individual date; on the right-hand side, archived posts are listed by date.
- Click on the post you want to view.
- To post a comment, click on ‘leave your comment’; type your comments in the box, and click on ‘Publish
- Your Comment’ at the bottom of the page. You can also preview your comment.
- To exit the class blog, click on ‘Sign Out’ at the top right corner of the page.

Other things to know

This is a private blog only registered students who have been invited to the blog can post to and read the class blog. The blog is a forum for scholarly exchange and discussion only. In addition to your Critical Reading Responses, feel free to post thoughts about course materials and class discussions. **But, please do not post materials** that do not have to do with the course, any personal information, or posts to specific individuals only (although you can respond to specific posts as above). **DO NOT** include your student ID number or any other personal information in blog postings. As part of the course, the blog is governed by the Code of Student Behaviour and all other University of Alberta regulations as outlined in the *University Calendar* and WST 420 course syllabus. This means that everyone participating in the blog must be respectful in their treatment of other viewpoints and individuals. If you violate these regulations, you will be removed from the class blog.