

FEMINIST LEGAL THEORY
Fall 2008
Professor Carissima Mathen
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416-595-7170 ext. 223¹

SYLLABUS

COURSE INFORMATION

a. Class Times and Location

Tuesday, 4:40-6:30, room 203

b. Learning Objectives

This course examines feminist legal theory as both a site of intellectual inquiry and a tool for effecting social change. We will explore significant developments in the field, with a specific focus on the Canadian context and on feminist legal action (particularly in constitutional law). How does feminist legal theory explain law and the role law plays in women's systematized inequality? Is law really amenable to feminist analysis? What does/might feminist legal action look like, and what has it achieved? How does feminist legal theory deal with diversity, conflict and contestation among women? How adaptable is feminist legal theory to issues that challenge the very notion of what it means to "be" a woman? These questions will be explored through historical and topical discussion. The course will draw broadly from academic and social commentary, and from case law.

Upon completion of this course, students should have gained:

- an understanding of basic analytical concepts relevant to feminist legal theory
- exposure to varied sites of theoretical and topical feminist debate
- the ability to engage in critical analysis and discussion of feminist legal scholarship, strategy and litigation
- experience in feminist legal scholarship through the completion of a scholarly paper
- experience in legal scholarship through the work-shopping of a scholarly paper

¹ This number applies until December 1, 2008. Please see "How to Reach Me", below.

c. Evaluation

Your grade is determined on the basis of:

1. One essay (20-25 pages), on a topic of your choice but approved by me, due Monday December 8, 2008. (40%)

The paper must be on an issue relating to Feminist Legal Theory. It may be research-oriented or philosophical, but it *must* be critical in nature with a clear, well-developed argument. A purely descriptive paper is insufficient.

A one-page précis of your proposed essay is due no later than **Tuesday, October 21**. I encourage you to think about your papers, discuss topics with me, and submit your précis as early as possible.

I have set aside the last three classes of the term for **student presentations** – these are intended to provide an opportunity for you to “workshop” your paper with the rest of the class. Details will follow at a later date, but, generally, the presentations will be informal in nature.

In accordance with the regulations you may submit a hard copy of your paper to Osgoode Student Services. However, submission of an electronic copy will facilitate my ability to provide you feedback more quickly and comprehensively.

2. Two short “reaction papers”, 2 pages in length, on some aspect of the readings assigned for a class. (20%)

A sign-up sheet will be distributed in the second week of classes. No more than two students may sign up for any one class. (If enrollment numbers require it, the cap will be increased to three students.)

Papers are due **the immediately preceding Monday at noon**. They must be **emailed** to me at cmathen@unb.ca.

Papers not submitted in time will not receive credit. All papers for classes for which you have signed up must nonetheless be submitted before your final grade is calculated.

Any student may submit more than two papers, in which case I will count only the best two.

You will be “on call” in classes for which you have officially signed up (as opposed to merely submitting extra papers); you should assume that I will engage you in discussion.

3. Class attendance and participation (40%)

A significant portion of your grade is reserved for attendance, participation and paper work-shopping. **In grading this component I will look first at a student's effort, preparation and engagement, and only second at the student's facility with feminist legal theory.**

HOW TO REACH ME

Please do not hesitate to contact me about any questions or concerns that you have.

Due to my academic leave from UNB, my contact information varies over the term. My email address remains the same: cmathen@unb.ca

Until December 1, 2008: 416-595-7170 ext. 223

After December 1, 2008: 416-201-1548 or 506-453-4738

Student may also make arrangements to see me after class.

MATERIALS

Mathen, "*Feminist Legal Theory*", Fall 2008.

A course webpage will be created.

READING LIST

To reduce copying costs, I have not included Supreme Court of Canada cases – they are marked with an asterisk and an online link. Materials marked as "additional reading" are not mandatory and are therefore not included in the course book. All of these are available either through regular legal databases or links which are provided. One, an excerpt from Catharine MacKinnon's *Only Words*, has been placed on reserve. If you have trouble accessing any of these please let me know.

Week 1 – September 2

Intro to course – no reading

Week 2 – September 9: Grounding the Debates

Dorothy E. Chunn and Dany Lacombe, “Introduction” in *Law as a Gendering Practice*

Carol Smart, *The Power of Law from Feminism and the Power of Law*, 1989

Catharine MacKinnon, “Difference and Dominance” from *Feminism Unmodified* (1982) 37

Robin West, "Jurisprudence and Gender" (1988) 55 *University of Chicago Law Review* 1

Elizabeth Comack, "Theoretical Excursions" in *Locating Law: Race/Class/Gender Connections* (Halifax: Fernwood, 1999) at 19

Week 3 – September 16: Race, Essentialism, Intersectionality

Angela Harris, “Race and Essentialism in Feminist Legal Theory” (1990) 42 *Stanford Law Review* 581

Mary Ellen Turpel, “Patriarchy and Paternalism: The Legacy of the Canadian State for First Nations Women” (1993) 6 *Canadian Journal of Women and the Law* 174

Dianne Pothier, “Connecting Grounds of Discrimination to Real People’s Real Experiences” (2001) 13 *Canadian Journal of Women and the Law* 39 -73

Radha Jhappan, “Post-Modern Race and Gender Essentialism or a Post-Mortem of Scholarship” in T.Brettel Dawson ed. *Women, Law and Social Change* (3rd) 61

Additional Reading:

- Nitya Duclos, “Disappearing Women” (1993) 6 *Canadian Journal of Women and the Law* 25

Week 4 – September 23: Class and Accountability

**Symes v. MNR*, [1993] 4 S.C.R. 695. <http://scc.lexum.umontreal.ca/en/1993/1993rcs4-695/1993rcs4-695.html>

Audrey Macklin, “*Symes v. MNR*: Where Sex Meets Class” (1992) 5 *Canadian Journal of Women and the Law* 498

Michael Mandel, "Gender, Class and Legal Politics" in *The Charter of Rights and the Legalization of Politics in Canada* (1994) 433

Rebecca Johnson, *Taxing Choices: The Intersection of Class, Gender, Parenthood and the Law* (2002)

Additional Reading

- Joan Williams, "Implementing Antiessentialism: How Gender Wars Turn into Race and Class Conflict" 15 *Harvard Blackletter Law Journal* (1999) 41
- Caitlin Flanagan, "How Serfdom Saved the Women's Movement" (2004) *Atlantic Monthly* <http://www.theatlantic.com/doc/200403/flanagan>

Week 5 – September 30: Rosh Hashanah – NO CLASS

Week 6 – October 7: Representations of Women and the Female

LEAF Factum in *R. v. Butler* (SCC).

Lise Gottell, "Shaping *Butler*: The New Politics of Anti-Pornography" in Brenda Cossman, ed. *Bad Attitude/s on Trial* (1997) 48

LEAF Factum in *Little Sisters v. Canada Customs* (SCC)

Janine Benedet, "*Little Sisters*: Sexual Equality and the Attack on *R. v. Butler*" (2001) 39 *Osgoode Hall Law Journal* 187

Additional Reading

- Catharine MacKinnon, *Only Words* 3-41

Week 7 – October 14: Sexual Violence

Catherine MacKinnon, "Feminism, Marxism, Method and the State: Toward Feminist Jurisprudence" (1983) 8 *Signs* 635

LEAF Factum in *R. v. Ewanchuk* (SCC)

Joanne Wright, "Consent and Sexual Violence in Canadian Public Discourse: Reflections on *Ewanchuk*" (2001) 16 Canadian Journal of Law and Society 173

R. v. R.V., [2004] O.J. No. 849

Week 8 – October 21: The Challenges of Legal Method

LEAF Factum in *R. v. O'Connor* (SCC)

**Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497.
<http://scc.lexum.umontreal.ca/en/1999/1999rcs1-497/1999rcs1-497.html>

Diana Majury, "Introducing the Women's Court of Canada" (2006) 18 Canadian Journal of Women and the Law 1

Denise Réaume, *Law v. Canada (Minister of Employment and Immigration)* (2006) 18 Canadian Journal of Women and the Law 143

**R. v. Kapp*, 2008 SCC 41
<http://scc.lexum.umontreal.ca/en/2008/2008scc41/2008scc41.html>

Week 9 –October 28: Cultures Clashing

Leti Volpp, "Feminism Versus Multiculturalism" (2001) Columbia Law Review 1181

L. Almede Obiora, "Bridges and Barricades: Rethinking Polemics and Intransigence in the Campaign Against Female Circumcision" (1997) Case Western Reserve Law Review 275

Natasha Bakht, "Arbitration, Religion and Family Law: Private Justice on the Backs of Women" National Association of Women and the Law (March 2005)

Additional Reading

- Sonia Lawrence, "Cultural (In)Sensitivity: The Dangers of a Simplistic Approach to Culture in the Courtroom" (2001) 13 Canadian Journal of Women and the Law 107

Week 10 – November 4: The Moral and Legal Significance of “Woman”

Susan Etta Keller, "Operations of Legal Rhetoric: Examining Transsexual and Judicial Identity," (1999) 34 *Harvard Civil Rights and Civil Liberties Law Review* 329

barbara findlay, “Real Women: Kimberly Nixon v. Vancouver Rape Relief” (2003) 36 *U.B.C.Law Review* 57-76

Carissima Mathen, “Transgendered Persons and Feminist Strategy” (2004) 16 *Canadian Journal of Women and the Law* 291-316

Additional Reading:

- *Vancouver Rape Relief and Women’s Shelter v. Nixon*, [2003] B.C.J. No. 2899
- *Vancouver Rape Relief and Women’s Shelter v. Nixon*, [2005] B.C.J. No. 2647

Week 11 – November 11: Strategy, Activism, Contestation

Lise Gotell, “Litigating Feminist Truth: An Antifoundational Critique” (1995) 4 *Social and Legal Studies* 99

Rhada Jhappan, Ed., “The Equality Pit and the Rehabilitation of Justice” (1998) 10 *Canadian Journal of Women and the Law* 61

Recall Mandel, *The Charter of Rights and the Legalization of Politics* (Week 4)

Sheila McIntyre, “Feminist Movement in Law: Beyond Privileged and Privileging Theory” in *Women’s Legal Strategies in Canada* (2002) 42

Weeks 12 – 14: Presentations

December 8, 3:30 pm: Papers due

OSGOODE AND YORK ACADEMIC POLICIES

a. Academic Honesty and Integrity

Osgoode students are required to maintain high standards of academic integrity and are subject to the York Senate Policy on Academic Honesty and the relevant Osgoode Academic Rules. The Senate Policy can be found at <http://www.yorku.ca/secretariat/policies/document.php?document=69> The York University academic integrity website can be found at <http://www.yorku.ca/academicintegrity>

The Senate Policy and Osgoode Academic Rules are also found in the Student Handbook, which is available from the Office of Student Services and on the myosgoode website.

b. Religious Observance

York University is committed to respecting the religious beliefs and practices of all members of the community, and making accommodations for observances of special significance to adherents. Should any of the dates relating to examinations or assignments for this course pose such a conflict for you, please let me know within the first three weeks of class. Please note that to arrange an alternative date or time for an examination scheduled in the formal examination periods, students must complete an Examination Accommodation Form, which can be obtained from the Office of Student Services at Osgoode Hall Law School.

c. Students with Disabilities

York University has a range of resources to assist students with physical, mental, psychiatric and learning disabilities in achieving their educational objectives. Students with disabilities requiring accommodation in the classroom or in the examination or evaluation process are encouraged to identify themselves to the Osgoode Office of Student Services as soon as possible. All requests for accommodation will be kept confidential. Request for examination accommodation must be approved by the Assistant Dean (Student Services), Gina Alexandris.

d. Other York University Policies

Further information concerning relevant York University academic policies, such as the Ethics Review Process for research involving human participants is available on the Senate Committee on Curriculum & Academic Standards webpage (see Reports, Initiatives, Documents) – http://www.yorku.ca/secretariat/senate_cte_main_pages/ccas.htm