

Course Outline

Course: **LAWS 4106: LAW AND VIOLENCE**
Term: **Winter 2013**
Prerequisite: **4th Years Honour Standing**
Class: **Day & Time: Tuesdays, 2:35-5:25**
Room: Please check with Carleton Central for current room location

Instructor: **Jane Freeland**
Email: **jane_freeland@carleton.ca**
Office Hours: **TBA**
Office Location: **B442 LA – Contract Instructor’s Office**

Course Description and Objectives

This course is designed to encourage students to think critically about the ways in which the law sees and regulates violence. By focusing on the relationship between law, gender and sexuality we will examine not only how the law understands and defines gender violence, but also how it can work to enable, obscure or regulate such violence. We will focus on issues of gender based violence raised politicized by the second wave feminist movement, and examine how these ideas have come to inform and/or challenge the contemporary legal system. For example, how have liberal feminist concepts of violence against women come to inform contemporary debates over prostitution, most recently heard in *Bedford v. Canada*? How can, and have, feminist approaches to the legal system worked to confront the law of rape, both in domestic law and internationally? How has feminism worked to define gender violence through a heteronormative and heterosexist lens? We will read both theoretical feminist texts and historical literature in comparison to current scholarship, as a way of understanding the historical and social processes at work in the legal system and its conceptualization of and approaches to gender-based violence. Importantly, throughout the class we will read the works of people confronted by both violence and the legal system, in order to hear the voices of those individuals navigating law and violence.

This course deals with sensitive subject matter, and we will endeavour to create a safe space for all students to participate and learn in. Students are expected to behave in a civil and respectful manner during classes to enable the creation of this safe environment

Note on Academic Accommodation (Students with disabilities, religious obligations, pregnancy)

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows:

Pregnancy accommodation: write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details see the Equity Services website: www.carleton.ca/equity

Students requiring accommodation on the grounds of religious observance: write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details see the Equity Services website: www.carleton.ca/equity

Academic accommodation for students with disabilities: The **Paul Menton Centre** for Students with Disabilities (PMC) provides services to students with Learning Disabilities (LD), psychiatric/mental health disabilities, Attention Deficit Hyperactivity Disorder (ADHD), Autism Spectrum Disorders (ASD), chronic medical conditions and impairments in mobility, hearing and vision. If you have a disability requiring academic accommodations in the course, please contact PMC at 613-520-6608 or pmc@carleton.ca for a formal evaluation. If you are already registered with the PMC, contact your PMC coordinator to send me your **Letter of Accommodation** at the beginning of the term, and no later than two weeks before the first assignment is due or the first in-class test/midterm requiring accommodations. After requesting accommodation from PMC, please meet with me to ensure accommodation arrangements are made. Please consult the PMC website for the deadline to request accommodations for the formally-schedule exam (if applicable) at <http://www2.carleton.ca/pmc/new-and-current-students/dates-and-dealines/>

You can visit the Equity Services website to view the policies and to obtain more detailed information on academic accommodation at <http://carleton.ca/equity/accommodation>

Course Material

The course pack LAWS 4106 is available from:

Octopus Books
116 Third Avenue
(613) 233-2589

Other helpful Literature:

The following are books that we don't read in the course, but are recommended as background readings and as starting points for your research papers.

Lisa Price, *Feminist Frameworks: Building Theory on Violence Against Women* (Black Point: Fernwood Publishing, 2005).

Dorothy Chunn and Danny Lacombe (eds), *Law as a Gendering Practice* (Oxford: Oxford University Press, 2000)

Assessment

All components must be completed in order to receive a passing grade.

Attendance and Participation:	15%
3 Reading Reflections:	45% (15% each)
Final Paper:	40% (10% paper proposal; 30% final paper)

Assessment Breakdown

Attendance and Participation (15%)

All students are expected to **attend** class and **contribute** their ideas and opinions during class and group discussions.

The aim of this course is to encourage critical thinking among students on the issue of gender violence and the law. The sharing of ideas is an essential part of this learning process. Discussions will be centred on the assigned weekly material, and participation will allow us to understand and challenge the relationship between the legal system and violence.

Attendance is an essential part of participation, and students are expected to attend all seminars. **Unexplained absences** will be penalized as follows: 1 absence = 10% deduction of **entire** participation grade; 2 absences = 30% deduction; 3 absences= 50% deduction; 4 absences= 100% deduction.

3 Reading Reflections (Total of 45% or 15% each)

Students are to prepare **3** reading reflection papers throughout the semester.

These **4-5 page** (double spaced) papers are **critical reflections** on the assigned weekly readings. Students can choose which articles they respond to – one, some or all of the readings. The aim is not to summarize the content of the readings, but rather to draw **comparisons**, tease out the **issues and ideas** presented by the authors, and **ask questions** of the readings.

Papers are due at the beginning of the class for which the readings are assigned. Papers handed in during or after class will be late. If you cannot attend class, or are unable to print the response out, please **email** me the paper before the beginning of the class in which it is due.

The **first** reading reflection is due either **on or before: January 29**
The **second** reading reflection is due either **on or before: February 26**
The **third** reading reflection is due either **on or before: March 19**

Review Essay (10% essay proposal; 30% review essay)

The final paper will consist of a **2 page** essay proposal and a **12-15 page** (double spaced) review essay.

The review essay will be based on a selection of **3 books** chosen by the student on one of the themes discussed in the class. Students are expected to survey a particular field of research, as represented by the books and: identify and discuss common issues in the field; compare how each author addresses these issues; critically examine the arguments of each author; and reflect on how the field could be further developed. This paper must be structured around a central idea or thesis. The review essay is **due April 2**.

A **2 page essay proposal** outlining the 3 books chosen and an initial discussion of the topic will be **due March 5**. This short assignment should include (but is not limited to): an overview of the topic for analysis, a preliminary thesis and a rationale for the books chosen.

All written work must follow the Legal Style Sheet provided by the Department of Law and Legal Studies when referencing material.

See: <http://www.library.carleton.ca/help/canadian-guide-uniform-legal-citation>

Policies for Late Work/Extensions

Late work will not be accepted. This is to allow adequate time for students to read over assignment feedback and follow up on any questions/issues arising from returned work.

Extensions for assignments will only be granted in cases of documented medical or emotional hardship.

Weekly Class Schedule

January 8: Introduction

No readings this week

January 15: Defining Gender

What is gender? How does it relate or connect to sex and sexuality? How are these categories used to police behaviour? How has feminism defined female subjecthood and what role does violence play in gender relations?

Readings:

Judith Butler, "Subjects of Sex/Gender/Desire" in *Gender Trouble: Feminism and the Subversion of Identity* (New York: Routledge, 2006): 3-10.

Anne Fausto-Sterling, "Dualing Dualisms" in *Sexing the Body: Gender Politics and the Construction of Sexuality* (New York: Perseus Books, 2000): 1-29.

Andrea Dworkin, "Power" in *Pornography: Men Possessing Women* (New York: Perigee Books, 1979): 13-24.

Recommended:

Denis van der Veur, et al, "Approaching Gender" in *Gender Matters: A Manual on Addressing Gender-Based Violence Affecting Young People* (Budapest: Council of Europe, 2007): Section 1 [online]

Mary Anne C Case, "Disaggregating Gender from Sex and Sexual Orientation: The Effeminate Man in the Law and Feminist Jurisprudence," *Yale Law Journal* 105(1)(1995): 1-105 [online]

January 22: Defining Gender Violence

What is gender violence? How does it connect with violence against women? How does our definition of gender violence exclude or omit peoples' experiences? What is included in the label "violence"?

Readings:

Lisa Price, "Defining Violence" in *Feminist Frameworks: Building Theory on Violence Against Women* (Black Point: Fernwood Publishing, 2005): 11-23

Viviane Namaste, "Genderbashing: Sexuality, Gender and the Regulation of Public Space" in *Invisible Lives: The Erasure of Transsexual and Transgendered People* (Chicago: The University of Chicago Press, 2000): 135-156.

Juliet November (ed), "It Takes Ass to Whip Ass: Understanding and Confronting Violence Against Sex Workers" in Ching-In Chen, Jai Dulani and Leah Lakshmi Piepzna-Samarasinha (eds) *The Revolution Starts at Home: Confronting Intimate Violence within Activist Communities* (Brooklyn: South End Press, 2011): 56-60.

Recommended:

Patricia Hill Collins, "The Ties that Bind: Race, Gender and US Violence" *Ethnic and Racial Studies* 21(5)(1998): 917-938 [online]

Angela P. Harris, "Gender, Violence, Race and Criminal Justice" *Stanford Law Review* 52 (2000): 777-807 [online]

January 29: Policing Pleasure? Pornography as Violence****First Critical Reading Reflection is due****

How/Is pornography a form of violence? How has it been connected to other forms of violence and domination? Does regulating pornography regulate our fantasy life? Can pornography be positive?

Readings:

Catherine MacKinnon, "The Roar on the Other Side of the Silence," in Catherine MacKinnon and Andrea Dworkin (eds), *In Harm's Way: The Pornography Civil Rights Hearings* (Cambridge: Harvard University Press, 1997): 3-24.

Laura Kipnis, "Preface" and "Fantasy in America" in *Bound and Gagged: Pornography and the Politics of Fantasy in America* (New York: Grove Press, 1996): vii-xiii and 3-63.

Ummni Khan, "Hit Me With Your Best Shot: The 'Violent' Controversy Surrounding SM Porn" in Dave Munroe (ed.), *Porn Philosophy for Everyone: How to Think with Kink* (Chichester: Wiley-Blackwell, 2010): 233-246

Robert Teixeira, "The Shortcomings of Canada's Porn Laws: Youthful Sexuality, Censorship and Canada's Child Pornography Law," Xtra (Toronto), Thursday, July 30, 2009. Online at: http://www.xtra.ca/public/National/The_shortcomings_of_Canadas_porn_laws-7192.aspx

Recommended:

Judith Butler, *Excitable Speech: A Politics of the Performative* (New York; Routledge, 1997).

February 5: Prostitution

How has prostitution been defined and debated by radical and liberal feminists? Is it about choice or patriarchy? What forms of violence to prostitutes face? Can the criminal justice system be a form of violence itself?

Readings:

Ummni Khan, "Running in(to) the Family: 8 Short Stories About Sex Workers, Clients, Husbands, And Wives," *Journal Of Gender, Social Policy & The Law* 19(2) [online]

Chris Brukert and Frederique Chabot, in collaboration with POWER, *Challenges: Ottawa Area Sex Workers Speak Out* (Ottawa: POWER, 2010): 30-77. Online at: http://www.powerottawa.ca/POWER_Report_Challenges.pdf

Leslie Ann Jeffrey and Gayle MacDonald (eds), "Social Control, Policing and Sex Work," in *Sex Workers in the Maritimes Talk Back* (Vancouver: University of British Columbia Press, 2006): 105-136.

Bedford v. Canada, 2010 ONSC 4264 [online]

Recommended:

Benedikt Fischer, Scot Wortly, Cheryl Webster and Maritt Kirst, "The Socio-Legal Dynamics and Implications of 'diversion': The Case Study of the Toronto 'John School' diversion programme for Prostitution Offenders," *Criminology and Criminal Justice* 2(385)(2002): 385-409. [online]

Yasmin Jiwani and Mary Lynn Young, "Missing and Murdered Women: Reproducing Marginality in News Discourse," *Canadian Journal of Communication*, 31(4)(2006): 895-917. [online]

February 12: Violences We See, Violences We Don't See: Addressing and Policing Domestic Violence

How is domestic violence defined, and what does this mean for marginalised groups? How do we best approach domestic violence – inside or outside of the legal system? How should services reach those groups often criminalised by the police?

Readings:

Eve Buzawa and Carl Buzawa, "The Increased Policy Preference for Arrest" and "No-Drop Policies" in *Domestic Violence: The Criminal Justice Response* (3rd ed.) (Thousand Oaks: Sage Publications, 2003): 125-161 and 194-203.

Kimberle Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women" *Stanford Law Review* 43(6) (1991): 1241-1299 [online]

Maurice Kwong-Lai Poon, "Beyond Good and Evil: The Social Construction of Violence in Intimate Gay Relationships" in Janice Ristock (ed.) *Intimate Partner Violence in LGBTQ Lives* (New York: Taylor and Francis, 2011): 102-130.

Recommended:

Ruthann Robson, "Lavender Bruises: Intra-Lesbian Violence, Law and Lesbian Legal Theory" *Golden Gate University Law Review* 20(3)(1990): 567-591. [online]

Donald G. Dutton, "The Failure of Criminal Justice Intervention Policy," in *Rethinking Domestic Violence* (Vancouver: University of British Columbia Press, 2006): 249-272.

Kierrynn Davis and Nel Glass "Reframing the Heteronormative Constructions of Lesbian Partner Violence: An Australian Case Study" *Intimate Partner Violence in LGBTQ Lives* (New York: Taylor and Francis, 2011): 13-36.

February 19: Reading Week – NO CLASS

February 26: The Law of Rape

****Second Critical Reading Reflection is due****

How was rape initially defined, and how has this changed with the advent of Queer Theory and new forms of feminism? What was the decision in *Jane Doe*, and why is it significant for understanding how rape is policed?

Readings:

Susan Brownmiller, “The Mass Psychology of Rape: An Introduction,” *Against Our Will: Men, Women and Rape* (New York: Bantam Book, 1975): 1-5.

Ann Cahill, “Introduction: The Problem of Rape” and “Feminist Theories of Rape: Sex or Violence?” in *Rethinking Rape* (Ithaca: Cornell University Press, 2001): 1-49

Jane Doe v. Metropolitan Toronto (Municipality) Commissioners of Police [online]

March 5: Rape and Gender Violence in the Legal System

****Review Essay Proposal is due****

What takes place during a rape trial? How is the possibility of secondary victimisation minimised? How does the criminal justice system take into account intersectionality?

Readings:

Sherene Razack, “What is to be Gained by Looking White People in the Eye: Race in Sexual Violence Cases” in *Looking White People in the Eye: Gender, Race and Culture in Courtrooms and Classrooms* (Toronto: University of Toronto Press, 1998): 56-87

Jane Doe, “How to Survive a Rape Trial” in *The Story of Jane Doe* (Toronto: Vintage Canada, 2004):62-80

Mary Heath and Ngaire Naffine, “Men’s Needs and Women’s Desires: Feminist Dilemmas about Rape Law ‘Reform’,” *Australian Feminist Law Journal* 1994(3): 30-52. [online]

March 12: Gender Violence in International Law

What role does gender play in international law? How did rape become a part of international law? How has gender violence been adopted into international standards?

In class we will be watching *Calling the Ghosts: A Story about Rape, War and Women*

Readings:

Slavenka Drakulic, “Boys Just Had Fun” in *They Would Never Hurt A Fly: War Criminal on Trial in the Hague* (London: Penguin Books, 2005): 51-65.

Tina Dolgopol, “Gender, Ethics and the Discretion Not to Prosecute in the ‘Interests of Justice’ under the Rome Statute for the International Criminal Court” in Francesca Bartlett, Reid

Mortensen and Kieran Tranter (eds), *Alternative Perspectives on Lawyers and Legal Ethics: Reimagining the Profession* (London: Routledge, 2011):169-183. Online at: http://www.iccwomen.org/publications/articles/docs/Dolgopol_Gender_ethics_and_the_discretion_not_to_prosecute.pdf

Rhonda Copelon, "Gender Crimes as War Crimes: Integrating Crimes Against Women into International Criminal Law" *McGill Law Journal* 46(2000): 217-240. [online]

Recommended:

Sherene Razack, "Men From the 'Clean Snows of Petawawa'" in *Dark Threats and White Knights: The Somalia Affair, Peacekeeping and the New Imperialism* (Toronto: University of Toronto Press, 2004):51-86.

March 19: Violence against the LGBTQ Community

****Final Critical Reading Reflection is due****

Why can violence against the LGBTQ community be defined as gender violence? How does heteronormativity reinforce/obscure violence? Does the criminal justice 'see' sexuality? Should it?

Readings:

Rebecca Barnes, "'I Still Sort of Flounder Around in a Sea of Non-Language': The Constraints of Language and Labels in Women's Accounts of Woman-to-Woman Partner Abuse" in Karen Throsby and Iora Alexander (eds) *Gender and Interpersonal Violence; language, Action and Representation* (New York: Palgrave, 2008): 29-43

Sarah Lamble, "Legal Invisibility in the Toronto Women's Bathhouse Raid Unknowable Bodies, Unthinkable Sexualities: Lesbian and Transgender," *Social & Legal Studies* 18(1)(2009): 111-130. [online]

Colleen Sullivan, "Kids, Courts and Queers: Lesbian and Gay Youth in the Juvenile Justice and Foster Care Systems," *Law and Sexuality* 6(1996): 31-62. [online]

Recommended:

Michael Stefanilo, "Identity, Interrupted: The Parental Notification Requirement of the Massachusetts Anti-Bullying Law," *Law and Sexuality* 21 (2012): 125-146. [online]

March 26: Gender as Violence: Trans People and the Law

Can gender be violence in itself? How does the need to 'define' work against/inflct violence on transgender individuals?

Readings:

Dean Spade, "Preface" and "Administering Gender" in *Normal Life: Administrative Violence, Critical Trans Politics, and the Limits of Law* (New York: South End Press, 2011): 7-17 and 137-169.

Kyle Kirkup, "Indocile Bodies: Gender Identity and Strip Searches in Canadian Criminal Law," *Canadian Journal of Law and Society*, 24(1), 2009: 107-125. [online]

Rebecca Mann, "The Treatment of Transgender Prisoners, Not Just an American Problem – A Comparative Analysis of American, Australian, and Canadian Prison Policies concerning the Treatment of Transgender Prisoners and a Universal Recommendation to Improve Treatment," *Law and Sexuality* 15 (2006): 91-134. [online]

Recommended:

Lane R. Mandlis, "Human Rights, Transsexed Bodies, and Health Care in Canada: What Counts as Legal Protection" *Canadian Journal of Law and Society* 26(3) 2011: 509-529. [online]

Wesley Ware, "Rounding up the Homosexuals: The Impact of Juvenile Court on Queer and Trans/Gender-Non-Conforming Youth" in Eric Stanley and Nat Smith (eds), *Captive Genders: Trans Embodiment and the Prison Industrial Complex* (Baltimore: AK Press, 2011):77-84.

April 2: Responding to Gender Violence: Alternative Forms of Justice

How does the legal system address violence? Do the systems we have in place adequately address victim's needs? What alternatives are available?

Readings:

Kent Roach, "Changing Punishment at the Turn of the Century: Restorative Justice on the Rise" *Canadian Journal of Criminology* July, 2000: 249-280. [online]

Elena Marchetti, "Indigenous Sentencing Courts and Partner Violence: Perspectives of Court Practitioners and Elders on Gender Power Imbalances during the Sentencing Hearing" *Australian and New Zealand Journal of Criminology* 43(2) 2010: 263-281. [online]

The Chrysalis Collective, "Beautiful, Difficult, Powerful" in Ching-In Chen, Jai Dulani and Leah Lakshmi Piepzna-Samarasinha (eds) *The Revolution Starts at Home: Confronting Intimate Violence within Activist Communities* (Brooklyn: South End Press, 2011): 189-206.

Recommended:

Joanne Belknap and Courtney McDonald, "Judges Attitudes about and Experiences with Sentencing Circles in Intimate-Partner Abuse Cases," *Canadian Journal of Criminology and Criminal Justice* 52(4) 2010: 369-295. [online]

Michel Foucault, "Alternatives to the Prison: Dissemination or Decline of Social Control?" *Theory, Culture and Society* 26(6): 12-24. [online]

April 9

****Final Review Essay Due****

No readings for this week