

ANTH3540/5540
Anthropology of Gender, Sexuality, and the Law
Monday 11.30 am – 2.15 pm

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In this course, students will learn to:

- 1) Analyze the logic and assumptions underlying law's relationship to gender, sexuality, class, and ethnicity;
- 2) Contextualize the meanings of gender and sexuality embedded in juridical processes within a historical and cross-cultural perspective;
- 3) Understand law as social processes, legal documents as ethnographic artifacts, legal procedures as techniques of legitimation;
- 4) Develop skills to critically examine the making of laws, their ways of enforcement, and their impact on people.

Assessment:

1. Tutorial Participation (10%)

Participation is an important element in this course. Each student is required to attend a minimum of 7 tutorials to pass the course.

The class and the online forum will be a safe environment for the exchange of diverse ideas and debates. Respect for differences and intellectual rigor are important pedagogical goals in this class. All opinions will be respected but all opinions must be defended.

2. Discussion Questions (20%)

All students contribute to class discussion by formulating some of their viewpoints and line of inquiry before coming to class.

There will be a Blackboard Discussion Forum set up for Week 2 onwards. Based on any of the readings, each student should submit one question for the class on or before Sunday (midnight) before our Monday class.

3. Facilitating Tutorial Discussion (10%)

Each student will be responsible for leading one tutorial discussion at the beginning of each class. Leading a tutorial means formulating provocative questions and opening up a space for dialogue. The point is to stimulate and invite your tutorial participants to jointly interrogate particular issues that interest you.

What you should do:

- i. Prepare ONE example/excerpt from any of the reading, or from outside sources, to stimulate class discussion. Tell us how this relates to the theme of the class at the end of the discussion.

- ii. Prepare ONE question about an argument one of the authors made to ask your classmates. The answer should be available within the readings. Explain to your fellow classmates why you choose this particular question at the end of the Q&A.
- iii. The entire facilitation should be around 20 to 30 minutes.

Please DO NOT present a summary of the readings and leave it at that. Try also to find material (newspaper cuttings, pictures, video clips etc) other than the readings to enrich the discussion. You are welcome but not required to discuss with me how you intend to proceed with the tutorial beforehand, unless you require special equipment for your presentation. Leading a tutorial means that you are in charge – so, be empowered and be creative!

4. Two Short Responses (30%)

Write response papers (800-1000 words) to TWO of the following options:

- i. any class from Wk 2-11, submit one week after the class;
- ii. an analysis of gender in court decisions (submit by Feb 17). More information later.
- iii. the rape trial workshop on March 13, submit one week after the workshop;

Please use response papers to demonstrate your understanding of any number of the readings. Formulate a short argument with one of the key points in the texts/workshop/fieldtrips/guest sharing.

See this on advice on response papers: [https://awelu.srv.lu.se/genres-and-text-types/writing-in-academic-genres/the-essay-format/response-papers/#:~:text=A%20response%20paper%20is%20a,or%20a%20work%20of%20fiction.&text=In%20the%20introduction%2C%20the%20book,article\(s\)%2C%20etc.](https://awelu.srv.lu.se/genres-and-text-types/writing-in-academic-genres/the-essay-format/response-papers/#:~:text=A%20response%20paper%20is%20a,or%20a%20work%20of%20fiction.&text=In%20the%20introduction%2C%20the%20book,article(s)%2C%20etc.)

Please name each piece with your [Last Name First Name]Response[#], e.g. CHENGRResponse1 and send to appropriate Blackboard folder.

5. Final Paper (30%) [1,500 words for ANTH3540, 2,000 words for ANTH5540] **Submit April 17.**

- i. Write a final paper on an aspect of the Prison System (e.g. state impunity, archive, gendered system). More details in class.
- ii. Write a final paper on a topic of your choice. Example: Digital Sexual Violence

Use what you have learnt in the course to write a research paper on digital sexual violence, the criminal justice response to it, and/or the legal remedies addressing the issue. Are there alternative ways to frame the problem of sexual violence and come up with solutions. This is a relatively new field, so it will be an interesting investigation for us all!

General Recommended Readings:

Malinowski, Bronislaw. 1985[1926]. *Crime and Custom in Savage Society*. Totowa, N.J.: Helix Books

Merry, Sally. 2006. *Human Rights and Gender Violence: Translating International Law into Local Justice*. Chicago: University of Chicago Press.

Miller, Alice & Mindy Roseman (eds). 2019. *Beyond Virtue and Vice: Rethinking Human Rights and Criminal Law*. Philadelphia: University of Pennsylvania Press.

Riles, Annelise. 2000. *The Network Inside Out*. Michigan: University of Michigan Press. [on the importance of documents as social and political artefacts]

Latour, Bruno. 2009. *The Making of Law: An Ethnography of the Conseil d'Etat*. London: Wiley. [on Supreme Court in France and the judges]

<https://williamsinstitute.law.ucla.edu/publications/hiv-criminalization-tennessee/>

Readings with an asterisk (*) are required for MA students and optional for undergraduates.

Part 1: Theorizing Gender, Sexuality, and the Law

Wk 1	Jan 9	Introduction
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Correa, Sonia. "Gender ideology: Tracking its origins and meanings in current gender politics." *Sexuality Policy Watch* 5.1 (2018): 18443-2. <https://blogs.lse.ac.uk/gender/2017/12/11/gender-ideology-tracking-its-origins-and-meanings-in-current-gender-politics/>

Vance, Carole S. "Interrogating Consent" #2 of *Global Dialogue, Criminalization, Choice and Consent* (CREA et al, Bellagio 2014) at: <http://www.creaworld.org/blog/global-dialogue-decriminalisation-choice-and-consent>

Freeman, Michael and David Napier. 2009. "Introduction: Law and Anthropology." In *Law and Anthropology*, pp.1-12. London: University College London.

Jan 13 Field Trip: Guided Tour to Gender and Space Exhibition 3.15 pm Meet at Tai Kwun (The old Victoria Prison), Central (Also recommended at Tai Kwun: <i>Mythmakers: Spectrosynthesis</i>)
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Wk 2	Jan 16	Theorizing Sexuality in the Law
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Rubin, Gayle. 1992 [1984]. "Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality." In Carole Vance (ed.) *Pleasure and Danger*, 267-293. London: Pandora.

Franke, Katherine. 2002. "Putting Sex to Work", in Wendy Brown and Janet Halley (eds), *Left Legalism/ Left Critique*. Durham: Duke University Press, pp.290-336.

Further Reading:

Foucault, Michel. 1984[1979]. "We Other Victorians," in Paul Rabinow (ed.) *The Foucault Reader*, London: Penguin, pp. 292-300.

Miller, Alice M. and Carole S. Vance, Sexuality, Human Rights and Health.
Health and Human Rights (7) 2:5-15, 2004

Mattei, Ugo and Laura Nader. 2008. "Introduction." In *Plunder: When the rule of law is illegal*. New York: Wiley-Blackwell.

Zelizer, Viviana. 2007. Introduction. *The Purchase of Intimacy*. Princeton: Princeton University Press.

Wk 3 JAN 30	Virtues, Rights, and the Law
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Sommer, Matthew. H. "Dangerous Males, Vulnerable Males, and Polluted Males: The Regulation of Masculinity in Qing Dynasty Law." In Susan Brownell and Jeffrey N. Wasserstrom (eds.) *Chinese Femininities/Chinese Masculinities: A Reader*, pp. 67-88. Berkeley: University of California Press.

Miller, Alice and Mindy Roseman. 2019. "Seismic Shifts: How Prosecution Became the Go-to Tool to Vindicate Rights." In Mindy Roseman and Alice Miller (eds.) *Beyond Virtue and Vice: Rethinking Criminal Law and Human Rights*, pp. 39-53. Philadelphia: University of Pennsylvania Press.

Sigley, Gary. 2009. "Sex, politics and the policing of virtue in the People's Republic of China." In Elaine Jeffreys (ed.) *Sex and Sexuality in China*, pp. 43-61. London: Routledge.

Further Reading:

*Park, Jeong-Mi. 2013. "Women Free of Habitually Lewd Acts?: Criminal Law, Postcoloniality, and Women's Sexuality, 1953-1960." *Korean Social Sciences Review* 3(2):217-248. (Skim)

Cho, Kuk. "The Crime of Adultery: Inadequate Means for Maintaining Morality and Protecting Women." *Journal of Korean Law* 2(1):81-99.

Further readings:

Engle Merry, Sally, Levitt, Peggy, et al. Law from Below: Women's Human Rights and Social Movements in New York City, in *Law and Society Review* 2010. (pp. 101-104, 108-118)

*Brown, Wendy. 2002. "Suffering the Paradoxes of Rights." In Wendy Brown and Janet Halley (eds), *Left Legalism/ Left Critique*. Durham: Duke University Press, pp.420-434.

Agamben, Giorgio. *Homo Sacer: Sovereign Power and Bare Life*.

Lancaster, Roger N. 2011. "Introduction: Fear Eats the Soul," pp. 1-17; and "The Victimology Trap," pp. 214-226. In *Sex Panic and the Punitive State*. Berkeley: University of California Press.

Riles, Annelise. 2006. "Anthropology, Human Rights, and Legal Knowledge: Culture in the Iron Cage." *American Anthropologist*, 108 (1): 52-65 (March 2006).

Part II: Locating Law in Historical Context

Wk 4 Feb 6	Colonialism, Traditions, and Customary Law in Hong Kong
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Chan, Selina. 1997. "Negotiating Tradition: Customary Succession Rights in the New Territories in Hong Kong." In Grant Evans & Maria S. Tam (eds.) *Hong Kong: The Anthropology of a Chinese Metropolis*. Honolulu: University of Hawaii Press.

Merry, Sally Engle and Rachel Stern. 2005. "The Female Inheritance Movement in Hong Kong: Theorizing the Local/Global Interface." *Current Anthropology* 46(3):387-408.

*Chan, Eliza. 1997 "Jyuh Fohng Neuih: Female Inheritance and Affection." In Grant Evans & Maria S. Tam (eds.) *Hong Kong: The Anthropology of a Chinese Metropolis*. Honolulu: University of Hawaii Press.

Further readings:

Carole J. Peterson. 1996. "Equality as a human right: The development of anti-discrimination law in Hong Kong." *Columbia Journal of Transnational Law* 34: 335-388.

Max, W. L. Wong. 2018. "Judicial Construction of T'sip in Chinese Family Law in East Asia – A Comparative Perspective." Unpublished Conference Paper.

Wk 5	Feb 13	Sexuality and Nationalism in the Law
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Cheng, Sealing and Kim Aeryung. 2019. "Virtuous Rights: On Prostitution Exceptionalism in South Korea." In Mindy Roseman and Alice Miller (eds.) *Beyond Virtue and Vice: Rethinking Criminal Law and Human Rights*, 93-113. Philadelphia: University of Pennsylvania Press.

Roseman, Mindy Jane. 2019. "Abortion as Treason: Sexuality and Nationalism in France." In Mindy Roseman and Alice Miller (eds.) *Beyond Virtue and Vice: Rethinking Criminal Law and Human Rights*, 158-169. Philadelphia: University of Pennsylvania Press.

*Cheng, Sealing. 2011. "The Paradox of Vernacularization: Women's Human Rights and the Gendering of Nationhood." *Anthropological Quarterly* 84(2):475-506.

Further Readings:

Kulick, Don. 2008. "Four Hundred Thousand Swedish Perverts." *GLQ* 11(2): 205-235.

Part III Sexuality, Punishment, and the Laws

WK 6	Feb 20	The Prison System
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Pemberton, Sarah. 2013. "Enforcing Gender: The Constitution of Sex and Gender in Prison Regimes". *Signs* 39(1):151-175

Polanco, Mieka. 2015. "Etiology/Assessment/Redress: Criminal Bodies and State Impunity." *PoLAR* 38(2):248-264.

*Davis, Angela. 2001. "Public Imprisonment and Private Violence." In Waller, M.R. and Rycenga, J. (Eds.) *Frontline Feminisms: Women, War and Resistance*, pp.3-16. New York, NY: Routledge

Further reading:

Rhodes, Lorna A. 2001. Toward an Anthropology of Prisons. *Annual Review of Anthropology* 30:65-83.

Sudbury, Julia. 2005. "Celling Black Bodies: Black Women in the Global Prison Industrial Complex". *Feminist Review* 80: 162–79.

Comfort, Megan. 2008. "'On-line' at San Quentin" and "'Papa's House': The Prison as Domestic Satellite," pp. 21-64 and 99-125. In *Doing Time Together: Love and Family in the Shadow of the Prison*. Chicago and London: University of Chicago Press.

Cohen, David Reed and Lee Panich. 2009. "The Prison Notebook: Lessons Learned Teaching Anthropology at San Quentin State Prison" *Anthropology News* 50(1): 25-6.

Garcia, Angela. 2016. "The Blue Years: An Ethnography of a Prison Archive." *Cultural Anthropology* 31(4):571-594.

Wk 7	Feb 27	Sex Work and Human Trafficking
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West, Mark. "Commodified Sex," 145-175. In *Lovesick Japan: Sex * Marriage * Romance * Law*. Ithaca, NY: Cornell University.

Doezema, Jo. 2002. "Who gets to choose? Coercion, consent, and the UN Trafficking Protocol." *Gender and Development* 10(1):20-27.

Peters, Alicia. 2015. "The Experts Make Sense of the Law," pp. 73-89. In *Responding to Human Trafficking: Sex, Gender, and Culture in the Law*. Philadelphia: University of Pennsylvania Press.

Further reading:

Vance, Carole. 2011. "Thinking Trafficking, Thinking Sex." *GLQ: A Journal of Lesbian and Gay Studies* 17(1): 135-143.

Peters, Alicia. 2015. "Defining Trafficking Through Survivor Experience," pp. 127-150. In *Responding to Human Trafficking: Sex, Gender, and Culture in the Law*. Philadelphia: University of Pennsylvania Press.

Saunders, Penelope. 2005. "Traffic Violations: Determining the Meaning of Violence in Sexual Trafficking Versus Sex Work." *Journal of Interpersonal Violence* 20(3):343-360.

Mar 7	Field trip: Guided Tour at The Correctional Services Museum, Stanley. Meet: 9 am at Admiralty Bus Station on Queensway for Bus 6, 6x, or 260.
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Wk 8	March 13	Mock Trial Workshop with the Association Concerning Sexual Violence Against Women (10 am-1 pm)
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Gribaldo, Alessandra. 2021. *Unexpected Subjects: Intimate Partner Violence, Testimony, and the Law*. Chicago: HAU Books. Download PDF here: <https://haubooks.org/unexpected-subjects-intimate-partner-violence-testimony-and-the-law/>

References:

Lethbridge, Henry. 1980. "Rape, Reform, and Feminism in Hong Kong." *Hong Kong Law Journal* 260.

Chiu, Manchung. 2015. 'Deterritorializing sexuality, act(less)ing justice': Zizekian/deleuzean/Lao Zi's perspective on Hong Kong rape law reform. *Reconstruction: Studies in Contemporary Culture* 15(2).

Wk 9	March 20	Obscenity, Sex, and the Law (Special Lecture by Justin Chu, HKU)
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Nussbaum, Martha. "Disgust and the Law." Chapter 3, *Hiding from Humanity: Disgust, Shame, and the Law*, pp.124-171. [Read Section 3, Disgust and the Average Man: Obscenity].

Comella, Lynn. 2020. "The Making of a Market." *Vibrator Nation: How Feminist Sex-Toy Stores Changed the Business of Pleasure*. Durham: Duke University Press.

*West, Mark. 2006. "Love Hotels." In *Law in Everyday Japan: Sex, Sumo, Suicide, and Statutes*. Chicago: University of Chicago Press.

Further Readings:

Chan, Johannes. 1987. "The Control of Obscene and Indecent Articles Ordinance 1987." *Hong Kong Law Journal* 17:288-306.

Jacobs, Katrien. 2018. "Women's sex/porn sanctuaries and social movement in Hong Kong and San Francisco." *Porn Studies* 5(3):257-270.

Coulement, Baptiste & Phil Hubbard. 2010. "Consuming Sex: Socio-legal Shifts in the Space and Place of Sex Shops." *Journal of Law and Society* 37(1):189-209.

Part IV Love in the Law

Wk 10	Mar 27	Regulating Love and Borders
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Constable, Nicole. 2012. "International Marriage Brokers, Cross-Border Marriages and the US Anti-Trafficking Campaign." *Journal of Ethnic and Migration Studies*. 18(7): 1137-1154.

Friedman, Sara L. 2015. "Regulating Cross-Border Intimacy: Authenticity Paradigms and the Specter of Illegality Among Chinese Marital Immigrants to Taiwan." In Sara L. Friedman & Pardis Mahdavi (eds.) *Migrant Encounters: Intimate Labor, the State, and Mobility Across Asia*, pp. 206-230. Philadelphia: University of Pennsylvania Press.

*Lewis, Rachel A. 2014. "'Gay? Prove it': The politics of queer anti-deportation activism." *Sexualities* 17(8): 958-975.

Further reading:

West, Mark. "Love," pp. 28-67. In *Lovesick Japan: Sex * Marriage * Romance * Law*. Ithaca, NY: Cornell University.

Constable, Nicole. 2012. "International Marriage Brokers, Cross-Border Marriages and the US Anti-Trafficking Campaign." *Journal of Ethnic and Migration Studies*. 18(7): 1137-1154.

Warner, Michael. 2002. "Beyond Gay Marriage." In Wendy Brown and Janet Halley (eds), *Left Legalism/ Left Critique*, pp. 259-289. Durham: Duke University Press.

Erni, John. 2015. "Marriage Rights for Transgender People in Hong Kong: Reading the W Case." In Deborah S. Davis and Sara L. Friedman (eds.) *Wives, Husbands, and Lovers: Marriage and Sexuality in Hong Kong, Taiwan, and Urban China*, pp. 189-217. Berkeley: University of California Press.

Stone, Linda. 2004. Gay Marriage and Anthropology. *Anthropology News*, p.10.

*Polikoff, Nancy. 2009. "Law That Values All Families: Beyond (Straight and Gay) Marriage." *Journal of the American Academy of Matrimonial Lawyers* 22 (2):85-104.

Further reading:

*Murray, Melissa. 2012. "Marriage as Punishment." *Columbia Law Review* 100(2).

Corn, David. 2015. The 19 Best Lines From the Supreme Court Decision That Just Legalized Gay Marriage.

<http://www.motherjones.com/politics/2015/06/supreme-court-gay-marriage-best-lines-kennedy-decision> (last accessed Jan 10, 2016)

Long, Scott. 2019. "Objects in Political Mirrors May Not be What They Appear." In Mindy Roseman and Alice Miller (eds.) *Beyond Virtue and Vice: Rethinking Criminal Law and Human Rights*, 233-247. Philadelphia: University of Pennsylvania Press.

Duggan, Lisa. 2002. "The New Homonormativity: The Sexual Politics of Neoliberalism." In *Materializing Democracy: Toward a Revitalized Cultural Politics*, ed. Russ Castronovo and Dana D. Nelson, pp.175-194. Durham and London: Duke University Press.

Council on Foreign Relations. 2015. "Same-sex Marriage: Global Comparisons." <http://www.cfr.org/society-and-culture/same-sex-marriage-global-comparisons/p31177>

Wilkins, Chris. 2014. "Gay Rights in Hong Kong." *Open Democracy*. <https://www.opendemocracy.net/chris-wilkins/gay-rights-in-hong-kong>

OBERGEFELL ET AL. v. HODGES, DIRECTOR, OHIO DEPARTMENT OF HEALTH, ET AL. 2015 No. 14–556.