

Gender, Wellbeing, and the Politics of Imagination: Law, Culture, Compassion

Abstracts

Bitá Amani

“Our Future With Chemical Food: From the Cradle to the Crypt, Intellectual Property Rights and Novel Food Regulations”

Novel food regulation in Canada is governed by Health Canada with an analysis that gives particular priority to the concept of substantial equivalence of the novel food with its traditional counterpart. Novel Food Regulations in Canada underplay the significance of *chemical difference* to the safety determination of genetically modified food. Yet, in the field of biopatenting it is very much the *chemical difference* that makes the food novel and thus a patentable invention; it is what matters for securing private intellectual property rights. Judicial attitudes from the field of intellectual property characterize 'DNA as chemical' and have thereby facilitated bio-patenting by agrochemical, biotechnology, and pharmaceutical firms. This talk will examine IP's contribution to a gender based analysis of novel food regulation in two meaningful ways. First, intellectual property rights have contributed to the need for a gender based analysis by providing the normative incentives for the merger of agriculture with business and a context in which women may be treated as subjects, objects, or conduits of health delivery. Second, IP interacts with the risk of novel foods in more implicit ways that affect the health of women disproportionately. Despite promises to the contrary, pesticide and herbicide 'ready' varieties may paradoxically be resulting in the increased use of chemicals.

Reconceptualizing DNA as chemicals provides a fresh perspective for policy making in novel food regulation that is consistent with legal attitudes in the biopatenting field that incentivizes them and broadens the scope of potential reforms available to address the particular interest of women, their health, wellbeing, and environments.

Angela Cameron and Dawn Lavell Harvard

“Community- based use of International Human Rights Law Toward the Elimination of Gender and Intersecting Discrimination”

Over the past several years FAFIA and NWAC have worked together to author and submit shadow reports to various United Nations and regional human rights bodies on the occasion of Canada's periodic reviews. We have worked to bring to light the deeply entrenched gender inequality faced by Canadian women in these international legal fora. Recently both the United Nations, and the Inter-American Human Rights Commission have noted striking gender inequality in wealth, rates of violence, employment, and other key areas, with particular attention to Indigenous women. Our talk will address specific strategies in community-based use of international human rights law including drafting shadow reports, oral advocacy in Geneva, and media engagement. We will also discuss the recent symposium we co-organised on missing and murdered Indigenous women and girls, the role of international human rights law, and the impact that it may be having on pre-inquiry planning for the national inquiry.

Debra M Haak

“Moving Beyond Discursive Framings of Exploitation and Sex Work: What Bedford Reveals about the Nature of Harm, its Causes and the Implications of Choice”

Canada's legal approach to the exchange of sex for money has changed significantly in the past two years. In December of 2013, the Supreme Court of Canada released its decision in *Canada (Attorney General) v. Bedford* declaring three *Criminal Code* offences related to prostitution unconstitutional. In November of 2014, Parliament responded with *The Protection of Communities and Exploited Persons Act*, a so-called “Made in Canada Model” of prostitution law that understands prostitution as a form of sexual exploitation harmful to those who engage in it, to the communities in which it takes place and to society as a whole. These two legal developments reflect the now dominant and divergent approaches to understanding and responding to the problems of prostitution and sex work reflected in contemporary discursive framings that posit the exchange of sex for money as invariably either a form of labour or a form of sexual exploitation. Many scholars and activists saw the Bedford decision as a victory for sex worker rights, and suggest that it precludes any policy response making continued use of criminal sanctions. At every level, however, the courts in the Bedford case clearly stated that decisions about the regulation of prostitution in Canada is a matter for Parliament. This chapter of my PhD thesis examines the evidence, arguments and reasoning set out in the decisions in the Bedford case to identify how the courts articulated the harms associated with buying and selling sex, and which constituencies of sellers were recognized in the articulation of those harms. In assessing the constitutionality of the impugned criminal provisions, the courts in Bedford focused on adult, consensual sellers and the physical harms they experienced as a result of the impugned criminal provisions. I show that the courts recognized and acknowledged other constituencies, other harms and other causes of harm, along with the limitations of research on the subject. The evidence, arguments and decisions in the Bedford case reflect the problems inherent in contemporary discourse. They also suggest a new approach to understanding the problems associated with prostitution and sex work by examining harm, its causes and the implications of choice on the occurrence and avoidance of harm.

Emanuela Heyninck

“Pay Equity, Gender Wage Gaps and the Role of Legislation”

Ontario and Quebec are the only two jurisdictions that have legislated pay equity that covers both public and private sectors. This presentation will discuss the origins of the legislation, relate Ontario's experiences with pay equity, and explore the role of this law in closing the gender wage gap.

Patricia Hughes

“Measuring Equality: Transcending Disciplinary and Experiential Borders”

Often equality is measured within boundaries. In law, for example, we might “count” how many women were sexually assaulted in a given year. Often, this is an appropriate way to “measure” increases or decreases in equality. However, measuring gains towards substantive equality requires taking into account the intersecting impact of legal, social, political, economic and structural contexts, and crossing and even transcending disciplinary and experiential boundaries. I intend to explore how these multidimensional approaches to measuring equality (and inequality) add to our understanding of the depth and breadth of substantive equality. To provide just one example: assessing the degree to which violence against women is itself a measure of inequality, as well as a contributing factor to continuing inequality, requires understanding its social, economic, psychological and other contextual impacts, how women's identities inform their experience of, response to and solutions for violence, and what measuring different forms of violence together tells us about women's equality. In addition, the patterns revealed by comparing achievement in different contexts can provide a broader picture of women's substantive equality. I suggest that a case study approach might be appropriate to achieve this objective.

Adelina Iftene

“Women Aging Behind Bars – Are Canadian Prisons Prepared for Them?”

Almost 20% of the prison population in federal institutions is over the age of 50. It is believed that in the next decade the percentage will raise to over 30. This means more disability, more chronic illnesses, more dementia, more terminally ill. How do we deal with this in a country where compassionate release is borderline inexistent and health or age are only marginal considerations in conditional release decisions? American literature has shown that older female offenders are the lowest risk prison group of all. However, they face challenges not experienced by other groups: high rates of anxiety and depression which makes them the most likely population to self-harm, chronic diseases such as breast and cervical cancer, enhanced emotional distress due to family separation, and very low self-esteem. Aside from a couple of criminological assessments undertaken by the CSC, the issue of older female offenders has not been studied in Canada, despite the spike in numbers. It is this project's mission to bring together data collected from interviews with these women, to assess the challenges they are facing, and to look into how institutions are addressing these challenges. This paper is meant to set the ground for the empirical project involving aging females. I will examine the known challenges women in general are faced with behind bars, the issues male aging prisoners have - drawing on the results of my previous research project -, and the US data on aging women offenders. Using these materials, a thesis will be advanced in regard to the data my current research project will likely unravel and how these findings could potentially be used in the future to enhance the protection of the rights of older female offenders.

Zoya Islam

“Muslim in Canada: An Examination of Muslim Exceptionalism through Popular Discourses Surrounding Honour Violence and Female Genital Mutilation”

Canada is praised for its supposed success story with multiculturalism. Many Canadians assume that multiculturalism promotes inclusivity and discourages racism, as the adoption of a multiculturalist policy promotes the idea that Canada is cutting edge and promoting of racial tolerance. Sunera Thobani argues that Canada perceives itself as a nation consists of responsible, compassionate, caring citizens who are committed to the values of diversity and multiculturalism. Canada is therefore constructed to be an antiracist, welcoming nation that espouses dignity. However, this very imagined construct is founded upon racist principles and enormous acts of violence upon racialized people.

The non-belonging of Muslim bodies in Canada is situated in a larger national conversation based on racial categorization, as explained by Sylvia Wynter in her seminal piece, “Unsettling the Coloniality of Being/Power/Truth/Freedom”. Such exceptionalist logics, which are tied to larger projects such as homonationalism as told by Jasbir Puar, are informed by constructions and conceptions of the human as explained by Sylvia Wynter. This paper examines how Muslims in Canada have been dehumanized and categorized as irrational, deviant subjects by critically analyzing the discourses surrounding honour killing and genital mutilation; this paper enquires into how these logics serve to exclude Muslim bodies within the Canadian nation state and continue to institutionalize whiteness. Firstly, this paper briefly explains the concepts of Muslim exceptionalism, honour violence, and genital mutilation. Secondly, this paper examines the language used by academics, activists and the government in Canada to condemn Muslims for honour related violence and genital mutilation, by employing Wynter's theoretical approach. Thirdly, this paper inquires into how these discourses serve to preserve the whiteness of the state by excluding Muslims and by discouraging multiculturalism and immigration. I ask, what are the implications of the mobilization against honour killings and female genital mutilation? What role do conversations about multiculturalism and immigration serve in (re)producing racial narratives of Muslim peoples? I use Wynter's work to posit that the construct of the “master code” and representation of the human must be deconstructed in order stop the racialization of Muslim bodies. To quote Wynter, “our present intellectual exchange is made possible on these terms alone” (Wynter, 1996”).

Kathleen Lahey

“Mapping Economic Gender Gaps and Strategies for Closing Them”

This paper details the many policy 'channels' that maintain women's disadvantaged economic status, which include gendered stereotyping in schools and universities, workplace discrimination, unequal pay for work of equal value, discriminatory tax and benefit laws, and lack of social sharing of heavy unpaid work burdens. Specific changes to laws, tax provisions, and benefit policies that can bring women to parity in all things economic are outlined as avenues for urgent change.

Ruth Lapp

“What Would it take to Shift a Paradigm”

The United Nations Conference on Trade and Development (UNCTAD, 2013) asserts that the global agriculture system must undergo a fundamental transformation if humans are to avert a global food crisis and mitigate climate change. While the UNCTAD (2013) report makes apparent the causal complexity of the critically fragile state of agriculture and its intersection with the growing vulnerability of the world's human community, the report does little to dismantle the paradigmatic underpinnings that have given rise to the crisis. Instead, the UNCTAD (2013) report revalorizes an anthropocentric worldview that ascribes valuation to nature based on human utility, and reinforces the notion that prosperity and social stability are inextricable from the neoliberal ethos of economic growth. Many of us now know, on a deep, deep level, this 'way of being' cannot continue.

My presentation will go to the heart of this matter in asking the question - what would it take to change this paradigm?: while creatively imagining what this change would be. To facilitate this dialogue, I will explore re-indigenization as an ethical imperative and conceptual tool for affecting social change leading to food justice and sustaining the integrity of ecological systems.

Michele M. Leering

“A multiple case study of exemplary legal educators encouraging “reflective practice” and an “access to justice consciousness”: A Research Project on the Threshold”

The national Action Committee on Access to Justice in Civil & Family Matters recommended law schools prepare future legal professionals to address serious access to justice challenges (*Access to Civil Justice: A road map for change*, 2013), proposing a "culture shift" to respond to the need for justice system innovation. The Canadian Bar Association's two influential publications *Reaching equal justice report* (2013) and *Futures: Transforming the delivery of legal services in Canada* (2014) called on law schools to prepare law students to respond to access to justice challenges and to the "unrelenting, dynamic and transformative change" facing the profession. In addition to these calls for action, there are a multitude of imperatives for supporting transformative change in legal education and in the legal profession not the least of which are responsive to feminist critiques of legal education and the need for a more relational pedagogy.

Law has been slow to recognize the potential of reflective practice as a "dynamic, developmental process" that helps professionals to respond effectively to uncertainty, complexity and "wicked problems". Engaging in reflective practice develops professional knowledge, skill and values. It has been identified in other professions as a critical to the formation of professional identity and expertise. How can a reflective practice competency build the capacity of legal professionals to respond creatively and strategically to the access to justice crisis and to face future challenges with flexibility and resilience?

I will use a qualitative education research methodology for my interdisciplinary doctoral project. I am designing a multiple-case study to identify promising practices that legal educators use to encourage reflective practice. I will discuss the literature review findings on the value of reflection to learning, the working conceptualization for reflective practice unique to law from my earlier research with eight law professors, and my proposed research methods and questions.

Meg Lonergan

“I didn’t go away and I wasn’t about to... And I still haven’t gone away” Conversations About Sex Work with Some Real Experts

This paper will critically examine the outcome of the *Bedford* decision (2013) and the subsequent enactment of the *Protection of Communities and Exploited Persons Act* (2014). Then I will empirically address the question of what community means to people whom self-identify as current or former sex workers; what were their experiences with the people in the neighborhoods where they work(ed)? Have they experienced violence? How do they describe their sense of belonging to different “communities”? How have things changed after the shift in prostitution laws and policy in Canada? In this paper I will present the results of my empirical work, that is to say, the three interviews I conducted with research participants in Ottawa. I will also explain my empirical methods, including the process of recruiting interviewees, issues I had to consider ethically and as a social scientist, how the interviews were conducted, methods used to record and transcribe the interviews, and analysis of the interview data. The analytical methods used to identify themes in the data will also be discussed in this chapter. This paper will focus on what the important themes that arose in the interviews were, will reflect the values expressed by the participants in the interviews and will challenge the dominant discourse of what “community” means in the socio-legal context of sex work in Canada.

Norah MacKendrick

Keynote: “The Body Toxic: Gender and the Politics of Environmental Health”

From the moment of conception, the human body begins accumulating environmental chemicals found in food and consumer products. Over the past four decades, efforts to remove these contaminants from production have stalled in Canada and the United States. While regulatory measures fizzle, the market for non-toxic commodities and certified organic food is expanding rapidly. In this talk, I address how this move toward “precautionary consumption” is a key strategy for avoiding contaminants. Using a feminist analytical lens and drawing on data collected in Canada and the United States, I argue that precautionary consumption is gendered, as it implicates women’s reproductive bodies and their domestic labor. I challenge the considerable optimism and support for food labeling and market transparency initiatives that enable precautionary consumption. Precautionary consumption is a partial and individualized response to a toxic consumer landscape, and it is most accessible to middle- and upper-middle class shoppers. In the last part of the talk, I consider other approaches that can provide more equitable, just and universal protections for environmental health.

Vrinda Narain

“Difference and Inclusion: Reframing reasonable accommodation”

Across the globe, pluralist democracies are grappling with questions of social diversity and the accommodation of difference. In Canada, policies of multiculturalism have been formulated as a way to respond to difference and to manage diversity. Invariably, it is at the intersection of gender equality, religious freedom and minority rights, that issues of competing rights arise, as women's equality rights are pitted against multiculturalism in the politics of recognition. A brief review of religious freedom jurisprudence reveals that most often, competing rights are sought to be balanced through the framework of reasonable accommodation. In this paper, building upon my theoretical intervention of 'critical multiculturalism' as a perspective that best responds to exclusion and disadvantage, I will consider the extent to which the framework of reasonable accommodation forwards minority women's rights. Reassessing the Supreme Court of Canada's approach to balancing religious freedom, gender equality and multiculturalism, I will problematize the principle of reasonable accommodation as the framework within which competing rights and interests are balanced. I will consider some of the major recent events that illustrate the rhetoric of multiculturalism, including the 2012 Supreme Court's decision in *R v. NS*, the 2013 proposed Secular Charter of Values of Quebec, and most recently, the 2014 Federal Bill S 7, the *Zero Tolerance For Barbaric Cultural Practices Act*, to better understand legislative initiatives and judicial responses to the regulation of racialized minority women. Providing a critique from a structural rather than a cultural lens, I will evaluate whether the individualized focus of reasonable accommodation can forward substantive equality and challenge systemic discrimination. This project aims to help further move the dialogue towards an inclusive notion of citizenship and deliberative democracy that will foster a commitment to a shared multicultural future.

Patricia Peppin

“The Standard of Care for Off-Label Drug Prescribing”

This paper examines the standard of care applying to physicians and manufacturers when drugs are prescribed off-label. Once a product has been approved for marketing, physicians have the discretion to prescribe it for other populations, for other treatment purposes, in other dosages, and in other methods of delivery than those for which the product was approved – for instance, to members of groups underrepresented in the clinical trials. Physicians prescribing drugs off-label must meet the common law standard of care for treatment and fulfill their duty to disclose. The paper evaluates the impact of current off-label use, using the regulatory criteria of efficacy and safety.

Creating better oversight and improved knowledge for patients, within a system of gradual introduction of unapproved uses, should lead to higher levels of safety and more efficacious treatments. Achieving this result requires public and private law measures, including federal measures improving adverse effect data collection and monitoring inclusion in clinical trials; provincial health profession regulations improving prescribing practices and controlling pharmaceutical marketing; and an increased awareness of how common law standards apply to off-label prescribing.

Marie McGregor Pitawanakwat

“Traditional Indigenous Land Tenure and Establishment of Legal Land Rights for Indigenous Women in Canada”

Canada holds itself out to the world as a nation that respects human rights, is democratic, and upholds its treaty obligations. It does not and the ensuing discussion will reveal how. Discussion and the implementation of policies and laws that will assist indigenous women to confront, manage, and recover from non-recognition of indigenous women’s rights to traditional indigenous homelands; wrongful eviction; domestic violence; violence against women; elder abuse; and homelessness are the desired outcomes.

Indigenous female well-being in Canada is affected by multi-faceted social, political, historical, economic, cultural and legal factors which include but are not limited to gender inequality; structural and systemic racial discrimination, exclusion, marginalization; income inequality; violence against women; food insecurity; inadequate or precarious shelter; and indigenous rights unrecognized in political, legal, and administrative settings.

Addressing these issues arose out of Ms. McGregor Pitawanakwat’s lived experience of dispossession, trauma, and violence. To triangulate the lived experience, the author conducted reviews of studies, reports, and articles. Discussion with other indigenous women followed. The author devised and launched a three-wave communications strategy to expose and highlight the issues. Civil proceedings in the Ontario Court of Appeal have been launched to gain redress, restitution, and compensation for losses.

The intended changes are policy implementation by the Government of Canada, the court systems, and First Nation band councils of Articles 5, 8, 10, 13, 20, 21, 22, 25, 26, 27, 28, 37.2, 40, and 44 of the United Nations Declaration of the Rights of Indigenous Peoples.

Dorothy Goldin Rosenberg

“Film as an Educational Tool for Transformative Social Change”

Toxic Trespass ([trailer](#))

Toxic Trespass, an award winning compelling film on children's health and the environment, is a co-production of If You Love Our Children Productions and the National Film Board of Canada, with the support of Women's Healthy Environments Network (WHEN). It investigates the growing evidence that we are conducting a large-scale toxicological experiment on our children, and explores what some scientists, doctors, activists and others are doing about it. [More information about this film is available here.](#)

The film contains a section on the Aamjiwnaang First Nations Community of Sarnia surrounded by refineries and petrochemical plants which helps us learn about and act on implications for environmental racism and the need for environmental justice.

What is useful is that the film highlight problems and illustrates what people are doing about them in their communities and with scientists. The accompanying resource guide contains information about using film as a tool for education for social change as well about information relating to scientific studies and organizations engaged in the struggles necessary to overcome challenges they face.

Please see www.toxictrespass.com

Sule Tomkinson

“Working the legal field pragmatically: Socio-legal research methodology, compassion, and facts in refugee research”

Social science research and the work of public bodies are imagined through equivalent underpinnings. Both idealize a detached, objective and neutral practice. Researchers, just like front-line public officials, are supposed to manage, control and confine disturbances that contaminate the systematic collection, categorization and dissemination of data/facts. This view is often in conflict with the realities of decision-making and fieldwork in the legal field. Researchers and public officials play an active and engaged role in data/fact collection and analysis. In this presentation, I reflect on the implications of sociolegal research methodology through the ethnographic research that I undertook at Immigration and Refugee Board of Canada, on public officials' discretionary practices in refugee hearings. In their everyday work, public-officials need to unpack the refugee definition and reconcile the law with the allegations within refugee claims in relation to their own imagined refugee narratives. Embeddedness in the hearing room and direct observation of various refugee claimants, refugee lawyers and public officials allowed me to document how public officials oscillate between sternness and compassion in their work.