Women’s Rights in Transnational Law
Professor Rebecca J. Cook
Faculty of Law, University of Toronto
Fall Semester, 2013:
Mondays 4:10 pm – 6:00pm (6:15 for the last 8 classes)
3 Credits

Contact Information
Rebecca J. Cook: rebecca.cook@utoronto.ca (available by appointment)

Learning Objectives

- Demonstrate an understanding of how the Convention on the Elimination of All Forms of Discrimination against Women (“Women's Convention”) has been applied, and how it might be more effectively applied, to improve women's status.

- Demonstrate an understanding of the ways in which the social sciences, particularly the social psychology literature, might be used to expose women's experiences of injustice, especially discriminatory gender stereotyping.

- Formulate how the principle of equality can be applied to modify social and cultural patterns of conduct of men and women, which are based on the idea of the inferiority or the superiority of either sex or on stereotyped gender roles.

- Formulate how the principle of equality might be more effectively applied to subgroups of women such as those marginalized in various ways, such as by race, age, identity.

Texts:

(1) Rebecca Cook and Simone Cusack, Gender Stereotyping: Transnational Legal Perspectives (Philadelphia: University of Pennsylvania Press, 2010)
(2) Course Supplement

Structure:

Part 1: September 9, 16, 23, 30, October 7
Part 2: October 21, 28
Part 3: November 11, 18
Part 4: November 25

Evaluation:

80% Written Work: four short papers
20% Class Participation: regular attendance, reflective input into class discussion, on-call days
Written work:
80% written work in the form of four short papers (1,563-1,875 words each, which is about 6-7 pages) analyzing the reading materials assigned for class. One paper must be written for each of the four seminar parts. Short papers are due by 9 am Monday of the day of the class in which the materials are to be discussed under my office door, Falconer Room 210. Permission for electronic submission will be given only in exceptional circumstances.

Please see Writing Guide at the end of the syllabus for further information on evaluation of written work. The University of Toronto provides a number of writing resources: www.utoronto.ca/writing.

Class participation:
All students will be evaluated on 20% class participation. Class participation will be measured by regular attendance with reflective input into class discussion. If you have to be absent from class, you are still responsible for the readings and asking a classmate for notes, and integrating the readings and discussion into the reflective papers. On-call days will require students to discuss their short papers, will introduce one of the reading materials assigned for the class.

Email Policy:
Email will not be used as an alternative to meeting with the course instructors before or after class or by appointment. Email inquiries will be responded to only in exceptional circumstances. Please ensure you consult the syllabus and other course materials before submitting any email inquiry. All email messages must include in the subject line the course identifier and a concise and clear statement of purpose [e.g. Women's Rights Seminar: short paper]. Inquiries of interest to all students will be addressed in class.

Course Outline

Part I
1. Sept 9   The Women's Convention in Context of International Law
2. Sept 16  The Women's Convention, Prejudices and Stereotypes
3. Sept 23  Naming Gender Stereotypes
4. Sept 30  State Obligations to Eliminate Gender Stereotyping

Part II
5. Oct 7    Gender Stereotyping as a Form of Discrimination
(Oct 14 – no class – Thanksgiving)
6. Oct 21   Gender Stereotyping in the Employment Sector

Part III
7. Oct 28   Gender Stereotyping in the Health Sector
(Nov 4 – no class – reading week)
9. Nov 11   Gender Stereotyping and Gender-based Violence against Women
**TABLE OF CONTENTS**

1. THE WOMEN’S CONVENTION – SEPTEMBER 9

(a) The Structure of the Women’s Convention and its Protocol

**Consider:**
- What is the Women’s Convention, and what substantive rights does it protect?
- What is the Women’s Committee?
- What does the Protocol add to the Women's Convention?

*Convention on the Elimination of All Forms of Discrimination against Women* (The Women's Convention) esp. arts. 1 – 6, 10 – 12, 15 – 18, 21, 24, and 28; and its Optional Protocol (in: *Gender Stereotyping*, 181-194; 195-200)


See also:


(b) Interpreting the Women’s Convention and its Protocol

**Consider:**
- What are the principles of treaty interpretation?
- How can these principles be applied to determine the object and purpose of the Women's Convention?
- What is meant by “the elimination of all forms of discrimination against women?”
- What is substantive equality under the Women’s Convention and what sorts of transformation are required?

Committee on the Elimination of Discrimination against Women, General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, 47th sess., 16 December 2010, CEDAW/C/GC/28


(c) The Women’s Convention in Context of the Evolution of International Law

Consider:
- What prototypes of women have emerged in international law?
- Does a focus on women’s specificities within the framework of universality achieve women’s equal rights?
- Does the strategy of women’s rights are human rights sufficiently address the gendered hierarchies?


2. THE WOMEN’S CONVENTION, PREJUDICES AND GENDER STEREOTYPES

Consider:
- What is a stereotype?
- Why do people stereotype?
- What are gender stereotypes?
- What are their forms, their contexts, and means of perpetuation and elimination?

(a) Overview

Re-read: Women’s Convention, Preambular para 14, arts. 2(f), 5(a), 10(c)

Gender Stereotyping, Chapter 1 (pp. 9-38)

(b) What is a Gender Stereotype?


(c) Compounded Stereotypes: gender, race and class


Committee on the Elimination of Discrimination against Women, General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, 47th sess., 16 December 2010, CEDAW/C/GC/28, para 2

See also:


3. NAMING GENDER STEREOTYPES – ARTICLE 5(a) – SEPTEMBER 23

Re-read: Women’s Convention, arts. 2(f), 5(a), 10(c)

*Gender Stereotyping*, Chapter 2 (pp. 39-70)

Consider:

- What is the significance of naming gender stereotyping?
- How does a law, policy or practice stereotype men or women?
- How does the application, enforcement or perpetuation of a gender stereotype in a law, policy or practice harm women or men?

(a) How Men and Women are Stereotyped


See also:


(b) How Gender Stereotypes Harm Women and Men

Consider:
- Does the gender stereotype fail to take account of a woman’s actual situation in a way that affects her individual autonomy, agency, or dignity?
- Does the gender stereotype disadvantage a woman in a way that does not relate to her needs, abilities, or circumstances?
- Does the gender stereotype imply that women are inferior to men?
- Do gender stereotypes of men harm women?

Petrovic v. Austria (1998), 33 E.H.R.R. 307 (European Court of Human Rights)

4. STATE OBLIGATIONS TO ELIMINATE GENDER STEREOTYPING
ARTICLES 1-5, 24 – October 7

Re-read: Women’s Convention, preambular para 14, arts. 1, 2(f), 3, 4, 5(a), 24 & 28


Gender Stereotyping, Chapter 3 (pp. 71-103)

Reservations entered to article 5(a) by the Governments of India (9 July 1993) and Niger (8 October 1999); Objections filed against the reservation of Niger by France (14 November 2000)

Reservations entered to article 7(b) by the Government of Israel

See also:

For a current list of reservations to the Women’s Convention, see online: United Nations Treaty Collection <http://untreaty.un.org/>


Law v. Canada (Minister of Employment and Immigration), [1999] 1 S.C.R. 497 (Canada, Supreme Court)

R v. Kapp, 2008 SCC 41, at paras. 23-25 (Canada, Supreme Court)

(b) State Obligations to Remedy Gender Stereotyping

Consider:

- What remedies, including temporary special measures, might States Parties adopt to provide individual relief for gender stereotyping?
- What remedies, including temporary special measures, might States Parties adopt to de-institutionalize gender stereotypes?
- What individual and structural means are appropriate to remedy the harm of gender stereotyping?

Re-read: Women’s Convention, art. 4


5. GENDER STEREOTYPING AS A FORM OF DISCRIMINATION – OCTOBER 14

Consider:
- How do stereotypes that harm women discriminate against them?
- When do harms caused by stereotyping rise to the level of discrimination or any other form of violation of women’s rights?
- Was a distinction, exclusion or restriction made on the basis of gender stereotyping?
- Did it have the effect or purpose of impairing or nullifying the equal recognition, enjoyment or exercise by women of human rights and fundamental freedoms?
- Was the application, enforcement, or perpetuation of a gender stereotype in a law, policy or practice justified?

Gender Stereotyping, Chapter 4 (pp. 104-130)  


S v. Jordan, 2002 (6) SA 642 (CC), [2002] (11) B.C.L.R. 1117; 2002 (6) SA 642: Ngcobo J (majority) at paras. 8 – 20; O’Regan and Sachs JJ (dissenting) at paras. 57 – 73, 95 – 98 (South Africa, Constitutional Court)  


See also:  


FOR CLASSES 6-10, PLEASE CONSIDER THE FOLLOWING QUESTIONS:

- What are the operative gender stereotypes in a particular sector?
- What are the origins, contexts and means of perpetuation of the operative stereotype relevant to understanding, naming and eliminating it in a particular sector?
- How do these stereotypes harm women, and how do they deny women their rights?
• How do these stereotypes discriminate against women?
• What are the state obligations to eliminate gender stereotyping in a particular sector?
• What remedies, including temporary special measures, might be effective at the individual and institutional levels to eliminate gender stereotypes in a particular sector?

6. GENDER STEREOTYPING IN THE EMPLOYMENT SECTOR – ARTICLE 11 – OCTOBER 21

(Refer back to the general points to consider on pages viii-ix and think about how they would apply in the employment sector.)

Re-read: Women’s Convention, arts. 2(f), 5(a) and 11

Price Waterhouse v. Hopkins, 490 U.S. 228 (1989), at 231-238; 250/58 (United States, Supreme Court)


7. GENDER STEREOTYPING IN THE HEALTH SECTOR – ARTICLE 12 – OCTOBER 28

(Refer back to the general points to consider on pages viii-ix and think about how they would apply in the context of the health sector.)


See also

8. GENDER STEREOTYPING AND GENDER-BASED VIOLENCE AGAINST WOMEN – GR 19 - NOVEMBER 11

Carmen K. Cheung
Director (Acting), International Human Rights Program
University of Toronto, Faculty of Law, T: 416.946.8730

(Refer back to the general points to consider on pages viii-ix and think about how they would apply to situations of gender-based violence against women.)

Re-read: Women’s Convention, arts. 1, 2(f), 5(a) GS181

United Nations Committee on the Elimination of Discrimination against Women,


(a) Mexico

Gender Stereotyping, pp 168-172 GS168


See also:

(b) Canada

Amnesty International’s splash for the No More Stolen Sisters campaign,
http://www.amnesty.ca/our-work/issues/indigenous-peoples/no-more-stolen-sisters


See also:


A30

Tameka L. Gillum, “Exploring the Link between Stereotypic Images and Intimate Partner Violence in the African American Community,” (2002) 8 Violence against Women 64

Inaction and Non-Compliance: British Columbia’s Approach to Women’s Inequality, Submission of the BC CEDAW Group to the United Nations Committee on the Elimination of Discrimination Against Women (Poverty and Human Rights Centre: September 2008) at p.10-11, 26-29


9. GENDER STEREOTYPING IN MARRIAGE AND FAMILY: POLYGyny

ARTICLE 16 – NOVEMBER 25

(Refer back to the general points to consider on pages viii-ix and think about how they would apply in the context of polygyny.)
(a) Family Law Context


See also:


(b) International Human Rights Context


Re-read: Women’s Convention, arts. 2(f), 5(a) and 16


(c) Immigration context


10. GENDER STEREOTYPING BY RELIGIOUS PRACTICES –
ARTICLE 5(a) – NOVEMBER 25

(Refer back to the general points to consider on pages viii-ix and think about how they would apply to religious practices.)

Re-read: Women’s Convention, arts. 1, 2(e), 5(a) and 16(c) GS181

Human Rights Watch, Discrimination in the Name of Neutrality: Headscarf Bans for Teachers and Civil Servants in Germany (New York: Human Rights Watch, 2009), 6-16, 52-56. (sections: Background; Germany’s Human Rights Obligations; Human Rights Violations) 355

R (on behalf of Begum) v. Head Teacher and Governors of Denbigh High School, [2006] UKHL 15, [2007] 1 AC 100, [2006] 2 All ER 487 (United Kingdom, House of Lords); read carefully Concurring Opinion of Baroness Hale, paras. 92-99 371


See also:

Multani v. Commission Scolaire Marguerite-Bourgeoys, [2006] SCC 6


WRITING GUIDE
Women’s Rights in International Law

Requirements:

• Four Short Papers (1,563-1,875 words each, which is about 6-7 pages) analyzing the reading materials assigned for class. One paper must be written for each of the four parts of the course.
• Submission:
  o By 9am on Monday of the class in which the short paper is to be discussed.
  o Under office door of Falconer Rm 210.
  o Permission for electronic submission given only in exceptional circumstances.
• Short papers will be used in class to guide discussion of the materials. Students will be on-call and required to discuss their short papers.
• Graded short papers will be returned after class with comments.

Objective: Active Reflection and Critical Engagement with the Reasoning of a Decision

Short papers should actively reflect on the reasoning of an assigned decision of a court or human rights tribunal by critically engaging with the other materials (or any part of the material) assigned for that class. This may include a section from the Gender Stereotyping book, an article, or a report. Do not summarize or describe the reading. Analyze the reading. Additional research is not required.

Assume for purposes of your short comment that you are the judge and are rewriting a particular decision. Short papers may:

- Question and reflect on the meaning and uses of language or concepts of a decision;
- Examine how the reading reinforces or challenges hierarchies, constructions and relations in a decision;
- Explore how a decision might use the social psychology literature in making a decision;
- Investigate the assumptions, values and interests (related to, for example, gender, race and ethnicity, or sexual orientation) underlying a decision;
- Articulate conflicts, contradictions or uncertainties in a decision;
- Problematize the assumptions or analytic framework of a decision.

Assessment Criteria:

Short papers will be assessed on: analysis, structure, and style.

Analysis: Clearly state at the outset your thesis or argument. What is of utmost interest is not your conclusion, but your reasons for drawing your conclusion. You must back up all assertions with reasons.
While it may be helpful to introduce the reading in your paper, your paper must go beyond description. You MUST analyze the reading and draw conclusions from your analysis.

Be certain to canvas alternative positions and arguments in the course of your paper and to rebut these to the extent that they are inconsistent with your arguments.

Use examples to illustrate your arguments. These may be cases, events, or hypothetical examples, where appropriate.

Some degree of originality is important. You are expected to develop your own thoughts and analysis, and not describe the thoughts and analysis of others.

Structure: Structure is essential to a clear and well-argued paper. You should include an introduction and a conclusion. You should outline your structure in your introduction. Arguments should be clear and logical and ideas should be linked coherently. Subheadings are useful in delineating structure and moving from one idea or argument to the next. Each paragraph should have something relevant to say about your thesis or argument. If it does not, ask yourself or try to explain why you have included that paragraph.

Style: Clear expression, good presentation, accurate grammar and spelling, and appropriate use of vocabulary are essential.

Citations and Referencing:

For the accepted legal citation style at the University of Toronto Faculty of Law, see the Canadian Guide to Uniform Legal Citation (referred to as the “McGill Guide”) or the Bora Laskin Law Library website.

All use of others’ language MUST be indicated in quotation marks and referenced. Use of others’ ideas should be fully referenced. Failure duly to acknowledge the work of others constitutes plagiarism and is a serious academic offence.

Additional writing resources are available: www.utoronto.ca/writing.