

WOMGEN 1310  
**Transgender Rights and the Law: Assumptions and Critiques**  
Mondays, 6 – 7 PM, 7:30 – 8:30 PM ET

*“The law means what it means to those subject to it.”* – Julia Hernandez

*“Every breath a black trans person takes is an act of revolution.”* – Lourdes Ashley Hunter

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**Pronouns:** they/them

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**Pronouns:** they/them

**Highlights:**

- There is no required textbook or purchased material for this course.
- Class will be synchronous, meeting on Monday nights ET for two one-hour chunks, with a half hour break in the middle.
- Grading is primarily based on a small number of short written assignments, a flexible end of semester project, pre-class questions/comments, and in-class participation.
- No legal background is required for this class but students will be expected to do pre-reading if they do not have a background in transgender experiences.
- I'm so excited to be learning with y'all! ☺

**Class Objectives:**

1. Discuss doctrinal approaches to constructing gender identity and combatting discrimination as well as how such approaches have been used as hooks for transgender advocacy.
2. Critique the assumptions around gender found in law and explore how they do or don't reflect the experiences of trans, non-binary, and gender-nonconforming people.
3. Develop a set of questions that allow students to apply feminist critiques to legal and policy interventions.
4. Create community for students to center trans voices.

## Course Description:

How does American law treat transgender, genderfluid, nonbinary, agender, and gender-nonconforming people? What assumptions about gender operate in legal doctrines, and how do these assumptions interact with the lives of transgender people, especially those at the intersection of multiple axes of oppression?

This seminar will discuss contemporary cases involving transgender rights, as well as historical cases where the rights of transgender litigants were directly or indirectly contested. Readings will incorporate case law, sociological perspectives, critical race studies, feminist theory, and direct first-person narratives. By looking at law through the lens of transgender experiences, the class will critique legal assumptions about gender and reflect upon how law as a whole could be made less cis-normative.

## Grading & Assignments:

Assignment	Due	Total Percentage
In-Class Participation* (10 sessions)	In class	20 %
Pre-Class Comments (10 comments)	12 PM EST before each class	5 %
Comment Retrospective	December 3, 2020	5 %
Describe Assignment (x2)	October 2, 2020 December 3, 2020	20 %
Apply Assignment	October 23, 2020	10 %
Repair/Reimagine Assignment	November 20, 2020	15 %
Capstone Project*	December 20, 2020	20 %
Flex Grading (categories with a * are eligible)	Preference submission due by October 2, 2020	5 %

Assignments are discussed in more depth in the various assignment pages on the Canvas site.

### *Pre-Class Questions/Comments*

Submit to the seminar's Canvas website one short question or comment on the readings before class. Please don't feel like you need to write too much – two to three sentences is fine. Pre-Class Questions or comments are graded on completion, not on content. However, you will be asked to reflect upon your comments and pick some for more content-based grading below. You may miss up to two responses without penalty.

### *Comment Retrospective*

At the end of the semester, you will be asked to pick three of your pre-class questions/comments and reflect upon them in an 500 word essay. More details are available on the assignment page.

### *In-Class Participation*

You will be required to participate in class discussions. Participation is judged based on both quantity and quality. When I say quantity, I do not mean that speaking more is always better. Instead, your goal should be to participate a proportionate amount to the number of students in the class. This means stepping back if you are used to talking a lot and stepping up if you do not usually speak. High quality participation builds on and relates to the comments of other students as well as integrating the readings. I will drop your two lowest participation grade days.

### *Flex Grading*

Different students are most excited to participate in class in different ways. There is an extra 5% of your grade for you to apply to either in-class participation or the capstone project. It means that whatever you pick determines more of your final grade for the class. You must make a decision by October 2, 2020 as to which you would like it to apply – if you don't, I will add it to in-class participation.

### *Extension Policy*

You can and should ask for extensions on assignments if you need them. You must request the extension before the due date, unless the circumstances make that truly impossible (i.e., internet outage, medical emergency). We will come to a mutual decision about extension length.

## **Classroom Policies:**

### *Online Participation & Attendance*

Cameras are not required, but are preferred. Feel free to eat and drink on camera. During class time, I would ask you to minimize other distractions.

Please notify me via email before class if you will be absent. If you are not able to notify me before class, please do so as promptly as possible.

I understand that illness and other unforeseen circumstances occur, but every attempt should be made to attend class, especially given the small number of sessions.

### *Office Hours*

My office hours are by appointment – you can make an appointment using my Calendly link (available on Canvas). **Every student is required to schedule two appointments per semester – at least one in the first three weeks, and one at any point after that.**

What can you do in office hours?

- Ask questions about the substance of the class. (Questions can be about particular cases or topics, or about how the subject generally fits together.)
- Work through an issue you're confused about by talking through it with me.
- Discuss something we talked about in class further.
- Get advice on a writing project (class-related or not).
- Talk about careers. Or frankly, most anything else.

If you know what you want to talk about in advance, it's great to send me a note that explains the general topic, so I can do any necessary prep.

### *Accessibility*

Harvard College is dedicated to facilitating equal access for students with disabilities and to cultivating a campus culture that is sensitive and responsive to the needs of students.

To request an accommodation for a disability during the course, students should contact the Accessible Education Office at [aeo@fas.harvard.edu](mailto:aeo@fas.harvard.edu). Additional information, including advice about how to register for accommodations, can be found at <https://aeo.fas.harvard.edu/students/register>.

Even outside of the context of accommodations, if there's something I can do to make your learning easier, please let me know.

### *Names and Pronouns*

If you go by a different name or set of pronouns than the one under which you are officially enrolled, please inform me. Likewise, if a classmate (or the instructor) mispronounces your name, please let them know so they can correct it. Students are expected to respectfully refer to each other by preferred, correctly pronounced names and pronouns during class discussions.<sup>1</sup>

### *Basic Needs and Childcare*

If you face challenges securing your food or housing (which would, of course, affect your performance in the course), I urge you to contact your Resident Dean for support. Furthermore, please notify me if you are comfortable in doing so. This will enable me to provide any resources that I may possess.<sup>2</sup>

I understand that during the pandemic, you may have additional family obligations that require you to provide care for those around you. Newborns are welcome in class (and breastfeeding is entirely appropriate, if applicable). For older children and babies, please discuss with me in advance.

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<sup>1</sup> This name and pronoun policy is adapted from Adrienne Keene's Introduction to Critical Race Theory Syllabus, available at <https://blogs.brown.edu/amst-2220j-s01-2017-fall/syllabus/>.

<sup>2</sup> Basic Needs statement is adapted from Sara Goldrick-Rab, *Basic Needs Security and the Syllabus*, <https://medium.com/@saragoldrickrab/basic-needs-security-and-the-syllabus-d24cc7afe8c9>.

## *Citation*

Citation is political. In the words of Rigoberto Lara Guzmán and Sareeta Amrute, “It is powerful to recognize that the people we usually think of as ‘research subjects’ are theorists in their own right.... Citation is a way of showing who you are and where you are going.”<sup>3</sup> Additionally, it is endemic in trans scholarship that transgender people are not credited for their ideas and/or written about while not being cited.

Therefore, citation in this class is not just a matter of following the honor code and/or showing that you did the reading. (Although those things are important.) It is a matter of acknowledging our transgender, gender non-conforming, queer ancestors, whose lives our work rests upon. It is also about acknowledging the brilliance of our community. If you build substantively off of another student’s point in class, whether in speaking or in writing, you are expected to acknowledge them.

You have two options for citation styles for this course [], and the Bluebook, the preferred legal citation system. Unfortunately, the official citation guide for the Bluebook is not open access. However, [Baby Blue](#), an open source implementation, should serve you just fine.

Independent of which one you choose, you are expected to “pincite” your sources. [Pincite](#) is a term from legal citation that refers to including the specific page upon which you found a particular quote or idea. It is very helpful for readers because it allows them to trace the lineage of your thoughts and follow along. I prefer you Bluebook any case citations, and am happy to talk to you about how to do that.

With all that being said, the boilerplate of the official College policy is below.

## *Academic Honesty and Collaboration<sup>4</sup>*

Academic dishonesty will not be tolerated in this class in any form. It is your responsibility to familiarize yourself with Harvard’s Honor Code, as well as with the College’s rules on academic integrity, including rules on dual submission and the definition of plagiarism. If you plagiarize or engage in other forms of intellectual or personal dishonesty, you will fail this course. Please consult with The Harvard Guide to Using Sources, as you will be held responsible for this material. Please ask me any questions that may arise about whether, how, and in which format to cite your sources.

Discussion and the exchange of ideas are essential to academic work. For assignments in this course, you are encouraged to consult with your classmates on the choice of paper

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<sup>3</sup> Rigoberto Lara Guzmán and Sareeta Amrute, How to Cite Like a Badass Tech Feminist Scholar of Color, <https://points.datasociety.net/how-to-cite-like-a-badass-tech-feminist-scholar-of-color-ebc839a3619c>.

<sup>4</sup> These policies are adapted from Phyllis Thompson’s syllabi.

topics and to share sources. You may find it useful to discuss your chosen topic with your peers, particularly if you are working on the same topic as a classmate.

However, you should ensure that any written work you submit for evaluation is the result of your own research and writing and that it reflects your own approach to the topic. You must also adhere to standard citation practices in WGS and properly cite any books, articles, websites, lectures, etc. that have helped you with your work. If you received any help with your writing (feedback on drafts, etc.), you must also acknowledge this assistance.

### *Recording*

I have made the choice to not record our sessions together, despite the fact that it will limit the options in terms of who may participate. This is because I have found that the subject material of this class often benefits from students (and teachers) sharing their personal experiences. You are prohibited from recording our class in any format (audio/video) or sharing personal experiences from students in class without permission from each and every class member.

Although I have no desire to be punitive in any aspects of my teaching, the recording policy is the one area where a punitive approach seems necessary. If you record class without permission and share it, it will both seriously negatively affect your grade and will be reported as an Honor Code violation.

## Syllabus:

### Class 1, September 2, 2020

#### Introduction

##### Objectives

- Introduce terms, definitions, theories, and strategies necessary for this course
- Introduce ourselves

##### Readings

- Let's Talk Trans
  - Sylvia Rivera, *Y'all Better Quiet Down* (Speech at Christopher Street Liberation Day Rally in Washington Sq. Park 1973) video: <https://vimeo.com/234353103>, transcript.
    - *Optional but Highly Recommended*: One from the Vaults Episode: STAR House, STAR People, <https://soundcloud.com/onefromthevaultspodcast/oftv-3-star-house-star-people-1>
  - Susan Stryker, "(De)Subjugated Knowledges"
- Learning Law
  - Orin S. Kerr, *How to Read a Legal Opinion: A Guide for New Law Students*, 11 Green Bag 2d 51 (2007).
  - Duncan Kennedy, Legal Education and the Reproduction of Hierarchy
  - Please also watch the "Quick and Dirty Introduction to the US Legal System" conversation available on Canvas.
- Putting Those Together
  - Kalaniopua Young, "From a Native *Trans* Daughter: Carceral Refusal, Settler Colonialism, Re-routing the Roots of an Indigenous Abolitionist Imaginary" in *Captive Genders*, 2nd edition.
  - Dean Spade, *Laws As Tactics*, 21 Columbia Journal of Gender and Law 40 (2011).

### Class 2, September 14, 2020

#### Theoretical and Historical Paradigms

##### Objectives

- Situate current transgender activism in historical perspective.
- Question and critique who is served by theoretical work about transgender people.
- Introduce three frameworks for critique evaluation of legal reforms:
  - Kimberlé Crenshaw's intersectional critique of employment law,
  - a critical legal studies evaluation of priorities and background rules,
  - and a disability legal studies lens.

##### Readings

- (Historical) perspectives on transgender organizing
  - Riki Wilchins, *Read My Lips* 21-29 (1997).

- Content warning for discussion of suicide and self-harm, if necessary skip pages 21 and 22.
- Megan Davidson, *Seeking Refuge Under the Umbrella: Inclusion, Exclusion and Organizing Within the Category Transgender*, Sexuality Research & Social Policy 1-21 (Dec. 2007).
- Troy Masters, *10 years later, firestorm over gay-only ENDA vote still informs movement*, Los Angeles Blade (Nov. 6, 2017) <https://www.losangelesblade.com/2017/11/06/10-years-later-firestorm-gay-enda-vote-still-informs-movement/>
- Cameron Awkward-Rich, “I Wish I Knew How It Felt to Be Free.” *The Paris Review*: June 11, 2020. <https://www.theparisreview.org/blog/2020/06/11/i-wish-i-knew-how-it-would-feel-to-be-free/>
- Theoretical Paradigms:
  - Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, University of Chicago Legal Forum (1989).
  - Libby Adler, *Gay Priori* 1-16, 175-211 (2018).
    - Optional: Critical Perspectives on Rights, <https://cyber.harvard.edu/bridge/CriticalTheory/rights.htm>
  - A.J. Withers and Liat Ben-Moshe (eds) with Lydia X. Z. Brown, Loree Erickson, Rachel da Silva Gorman, Talila A. Lewis, Lateef McLeod and Mia Mingus, *Roundtable: Radical Disability*.

### **Class 3: September 21, 2020**

#### **Whose Interests?**

##### *Objectives*

- Reflect on how scholars like Bell and Spivak conceptualize interests and representation.
- Look at the lead up to *Bostock* and decision-making around how to present arguments in that case, and how those decisions did or did not pay off.
- Using *Bostock* as an example, evaluate who different arguments and legal rationales serve.

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##### *Readings*

- Interests?
  - Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 Harv. L. Rev. 518 (1980).
  - Janet Halley, *Governance Feminism: An Introduction* 55-59 (2018).
  - Quotes from Gayatri Chakravorty Spivak on Strategic Essentialism
- *Bostock* as Case Study
  - Please watch the “Constitutions, Statutes, and Regulation, Oh My!” conversation available on Canvas.
  - *Bostock* (skim appendices)



- Masha Gessen, *The Supreme Court Considers LGBT Rights, But Can't Stop Talking about Bathrooms*, The New Yorker, <https://www.newyorker.com/news/our-columnists/the-supreme-court-considers-lgbt-rights-but-cant-stop-talking-about-bathrooms>
- Joan Biskupac, EXCLUSIVE: Anger, leaks and tensions at the Supreme Court during the LGBTQ rights case, CNN, <https://www.cnn.com/2020/07/28/politics/neil-gorsuch-supreme-court-lgbtq-civil-rights-act-alito/index.html>
- Too Far or Not Far Enough?
  - Kendra Albert, *Their Law*, Harvard Law Review Blog, <https://blog.harvardlawreview.org/their-law/> (June 26, 2019).
  - Morgan Sherm, I'm A Black Trans Woman, All Parts of My Life Matter, Zora <https://zora.medium.com/im-a-black-trans-woman-all-parts-of-my-life-matter-3516b057b052>
  - Ezra Young, What the Supreme Court Could Have Heard in R.G. & G.R. Harris Funeral Homes v. EEOC and Aimee Stephens, California Law Review Online 10-37 (Jan. 24, 2020).

#### **Class 4: September 28, 2020**

#### **Transgender Law?**

##### *Objectives*

- Practice skills critically reading legal decisions and case law
- Examine different cases involving transgender litigants for what they say about gender and narratives around transition.
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##### *Readings*

- Shannon Price Minter, *Do Transsexuals Dream of Gay Rights? Getting Real about Transgender Inclusion*, in *Transgender Rights*, 141-170 (2006).
- Please pick two of the cases below and read them thoroughly.
  - *MT v. JT*, 355 A.2d 204, 211 (N.J. 1976) (a family law case on “how to tell the sex of a person for marital purposes”).
  - *G. G. v. Gloucester County Sch. Bd.*, 853 F.3d 729 (4th Cir. 2017) (concurrence in Gavin Grimm case).
    - Optional: View Cassils’ PISSED to see how an artist works with this case
  - *Carcaño v. Cooper*, 1:16cv23, 2019 WL 3302208 (M.D.N.C. July 23, 2019) (motion to dismiss ruling on HB2, the North Carolina “bathroom bill”).
  - *Doe v. Fedcap Rehab. Servs., Inc.*, No.17-CV-8220-JPO, 2018 WL 2021588 (S.D.N.Y. Apr. 27, 2018) (case about the right of a nonbinary plaintiff to proceed under a pseudonym in an employment discrimination lawsuit).
  - *Diaz v. Oakland Tribune*, 139 Cal. App. 3d 118 (Cal. Ct. App. 1983) (California state court decision in a privacy case involving a trans woman who was outed by a newspaper).

- *Farmer v. Brennan*, 511 U.S. 825 (1994) (Supreme Court case establishing that deliberate indifference of a prison warden to threats of harm against a trans woman prisoner violated the 8<sup>th</sup> Amendment).
- As you read, reflect and take notes on:
  - Who was the transgender person involved in the case? How did they come to be involved in this legal process?
  - What does the court say about transgender people's genders?
  - What does the court say about cisgender people's genders?
  - Relatedly, what evidence does the court use to back up its understanding of gender?
  - If you can tell, what was the outcome – that is, what did the trans person get or not get as a result of this case?

**Class 5: October 5, 2020**

**Sex Discrimination and/or Disability Discrimination?**

Objectives and reading to be released later.

**Class 6: October 19, 2020**

**Necropolitics**

Objectives and reading to be released later.

**Class 7: October 26, 2020**

**The “Problem of Sex”, Deception, and Identification**

Objectives and reading to be released later.

**Class 8: November 2, 2020**

**Gatekeepers, Literally**

Objectives and reading to be released later.

**Class 9: November 9, 2020**

**Abolition and/or Harm Reduction**

Objectives and reading to be released later.

**Class 10: November 16, 2020**

**Automated Bias and the Limits of Intersectionality**

Objectives and reading to be released later.

**Class 11: November 23, 2020**

## **The Security State**

Objectives and reading to be released later.

## **Class 12: November 30, 2020**

### **Trans Resistance, Trans Joy, Trans Hope**

Objectives and reading to be released later.