

POLS 770 Graduate Seminar in Public Policy (CRN 89322)  
Fridays 9:30 – noon, Saunders 624

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Office hours: TR 9:00 – 11:00 am and by appointment

### **Bodies and Rights: The Politics of Legal Personhood**

This seminar investigates two growing strands in legal and public policy scholarship: the politics of legal personhood, and the politics of life and death as it pertains to legal concepts of the body. What does it mean to be a “person” under the law and how does the law recognize and regulate bodies? We will investigate legal claims made by different types of bodies and persons and analyze the ways movements use notions of rights and legal personhood to make their claims.

Accordingly, we will study different approaches to legal personhood and the policies that have evolved from our understanding of what constitutes a person with standing under the law. How has the concept of personhood expanded or contracted to include more or fewer beings, and why? Are fetuses persons? Are corporations persons? Are chimps persons? Who counts as a person now, and who will count as a person in the future? We will examine movements towards expanding and contesting legal personhood status by people with intellectual disabilities, corporations, nonhuman animals, the forest, the river, and the fetus.

We will pay special attention to life and death issues in these claims. Thus, how does the legal regulation of life and death and our assumptions about personhood impact policy on prenatal testing, abortion, torts, aid in dying/assisted suicide, and the regulation of organs and human cells?

Both MA and Ph.D. students are invited to participate in this seminar and will be invited to adjust writing and research requirements to suit their individual needs. The majority of our reading consists of journal articles from a variety of disciplines: law, political theory, disability studies, social movement studies, feminist studies, and bioethics. All of these will be available on the class Lulima website. We will read four books in their entirety:

- Ruha Benjamin. *People's Science: Bodies and Rights on the Stem Cell Frontier* (Stanford University Press 2013)
- Stacy Simplican. *The Capacity Contract: Intellectual Disability and the Question of Citizenship* (2015 University of Minnesota Press)
- Sue Donaldson and Will Kymlicka. *Zoopolis: A Political Theory of Animal Rights* (2011 Oxford University Press)
- Mary Roach: *Stiff: the Curious lives of Human Cadavers* (2003) Norton

**Required Readings:** All readings are posted on the “Resources” tab on the course *Laulima* website. We read an average of 4 articles or book chapters per meeting. Most of the readings are Law Review articles that use a lot of citations, so think twice before you hit the “print” button. Be sure to bring either printed or electronic copies of the reading to class.

**Course Requirements:**

**1. Attendance and Participation**

The success of this course depends on your timely attendance and participation in class discussion. Please come to class having read all assigned readings and be prepared to engage with them and your colleagues. Our weekly discussions are key moments to engage with each other, listen carefully and respectfully, demonstrate that you have thought about the readings, and develop our own ideas. Please let me know in advance of any circumstances that may prevent you from coming to class on time.

**2. Discussion Leader**

Everybody will have an opportunity to launch and lead the discussion for one class. This means that you come prepared with a summary of what you found to be the most pertinent and useful aspects of the reading and then launch our discussion. Your launch should address the following: (1) brief background on the author and research agenda (2) what central questions does the article ask and answer? (3) why is the question important? How have others sought to answer it? (4) how does this connect with other articles we are reading? (5) what have you learned? How does this inform/challenge your research?

Prepare your launch carefully, using whatever teaching technique you wish. Use of slides or other presentation software is discouraged, but you can use visuals, outlines, or other innovative media if you keep them short and useful.

**3. Memo of Intent**

By the third week of the semester (January 27) you will compose a one to two-page memo to me explaining what your goal for this semester is. Hopefully this is beyond “to learn something about law and public policy”. Instead, I want you to think about how you might connect law, legal research, and an attention to public policy and the politics of rights with your larger research agenda. Ask yourself how learning about the law might inform the issues you are interested in without necessarily requiring you to change your current research project. Start by briefly explaining what your research interests are, and pose a question that you’d like to think about over the course of the semester. The aim of this memo is to set some goals for your work this semester and to begin a dialogue that may continue over the course of your graduate career.

**5. Writing Assignments and Mock Conference**

There are two options to fulfill the writing requirement for this course.

**First Option (Analytical Paper):** The first option consists of an analytical paper that

compares and contrasts at least three movements towards legal personhood we have studied in this class. Use the assigned readings and reflect on the legal strategies and political choices of these movements. Then select at least two additional readings for each movement and expand your analysis of these movements.

**Second Option (Research Paper):** The second option consists of a 20-30 page research paper on a topic of your choice, based on the readings and discussions we have had in class, and focused around your memo of intent. In this option we will simulate the process you would go through to if you were to present a paper at an academic conference: you will first submit a paper proposal, outlining your question and ways you seek to answer it. Then you will compile a list of sources used for your thesis, with a brief description of each source. I will place you in writing groups in which you will comment on each other's first drafts. You will revise your paper and present it at our mock conference at the end of the semester. After your discussant's feedback you have the option to revise the paper again before you hand in your final copy.

- a. Paper Proposal: due week 9
- b. Annotated Bibliography: due week 11
- c. First Draft: due week 13
- d. Peer Feedback in writing groups: due week 14
- e. Conference Presentation: week 16
- f. Final Paper: due May 5 (week 17)

**Plagiarism Policy:** Plagiarism is taking another person's words or ideas without crediting them. Anything cut and pasted from a website without quotation marks and proper citation is plagiarism. Copying anything from a book or journal without quotation marks and proper citation is plagiarism. Submitting a paper (or significant parts of a paper) to two different courses is considered plagiarism as well. Plagiarism is cheating, the equivalent of academic theft. Because trust and attribution are central to the current nature of the academic profession, there is no excuse for plagiarism. Turning in a paper with plagiarized parts will result in a failing grade for the course.

**Disability Access:** If you are a student with a documented disability, please talk to me about ways to make the class accessible to you. You should also contact the KOKUA office that coordinates disability-related accommodations on campus (956-7511), located on the ground floor of the Student Services Center.

### **Reading Schedule**

The following is our reading schedule for the semester. I may adjust it as we find or flow as a class.

**week 1 (January 13): Introduction to the course and to each other**

**week 2 (January 20): Theoretical Foundations:** legal personhood, Constitutional thinking, the construction of normal bodies, disability studies

- Susan Bandes. "The Negative Constitution: A Critique" 1990 *Michigan Law Review*

- Nikolas Rose. "The Politics of Life Itself." *Theory, Culture & Society* (2001)
- Lennard Davis. "Constructing Normalcy - The Bell Curve, The Novel and the Invention of the Disabled Body in the 19<sup>th</sup> Century."
- Simi Linton. "Reassigning Meaning" (2006) in *Claiming Disability*

**week 3 (January 27) Legal Personhood and Political Citizenship: who is part of the polis?**

- Stacy C. Simplican. *The Capacity Contract. Intellectual Disability and the Question of Citizenship* 2015 University of Minnesota Press
- Memo of intent due in class

**week 4 (February 3): The Politics of Life, Prenatal Testing and conflicts with Disability rights**

- Eric Parens, and Adrienne Asch. (2000). "The Disability Rights Critique of Prenatal Genetic Screening: Reflections and Recommendations." Ed. Erik Parens and Adrienne Asch. *Prenatal Testing and Disability Rights (Hastings Center Studies in Ethics)* New York: Georgetown University Press. 3-42.
- Ruth Hubbard. (1997). Abortion and disability: Who should and who should not inhabit the world. *The disability studies reader*, 93
- Alison Piepmeier. (2013). The Inadequacy of "Choice": Disability and What's Wrong with Feminist Framings of Reproduction. *Feminist Studies*, 39(1), 159
- Rachel Rebouché and Karen Rothenberg (2012). Mixed messages: the intersection of prenatal genetic testing and abortion. *Howard Law Journal*, 983
- Mark W. Leach. (2016). "The Down Syndrome Information Act: Balancing the Advances of Prenatal Testing Through Public Policy." *Intellectual and Developmental Disabilities*. 84-93.

**week 5 (February 10): Reproductive Rights, Abortion bans, and movements towards Fetal Personhood**

- Cohen, I. Glenn, and Sadath Sayeed. (2011) "Fetal Pain, Abortion, Viability, and the Constitution." *The Journal of Law, Medicine & Ethics*
- Halva-Neubauer, Glen A., and Sara L. Zeigler. (2010) "Promoting Fetal Personhood: The Rhetorical and Legislative Strategies of the Pro-Life Movement after *Planned Parenthood v. Casey*." *Feminist Formations*
- Jessica Berg. "Of Elephants and Embryos: A proposed framework for Legal Personhood." 2007 *Hastings Law Journal*

- Jonathan Will. (2013) "Beyond Abortion: Why the Personhood Movement Implicates Reproductive Choice." *American Journal of Law & Medicine*

**week six (February 17): Challenging disability in the courts: Tort law, wrongful birth, and wrongful life**

- Anna Kirkland. "Credibility Battles in the Autism Litigation" 2012 Social Studies of Science
- Anne Bloom and Paul Miller. (2011). Blindsight: How We See Disabilities in Tort Litigation. *Washington Law Review*, 86
- Sagit Mor, Sagit. "The dialectics of wrongful life and wrongful birth claims in Israel: A disability critique." *Studies in Law, Politics, and Society* (2014): 113-46.
- Maya Manian. "Privatizing Bans on Abortion: Eviscerating Constitutional Rights Through Tort Remedies, 80 *Temple Law Review*. 123 (2007).

**week 7 (February 24): Death and Dying; Aid in Dying Legislation, autonomy in the dying process**

- Lindgren, Yvonne. "From Rights to Dignity: Drawing Lessons from Aid In Dying and Reproductive Rights." *Utah Law Review* (2016).
- Harriett McBryde Johnson, "Unspeakable Conversations" *The New York Times*, 2003
- Samuel Bagenstos. "Disability, Life, Death, and Choice." (2006) *Harvard Journal of Law & Gender*.
- Katharina. Heyer. "Rejecting Rights: The Disability Critique of Physician Assisted Suicide." (2011) *Studies in Law, Politics & Society*
- Sophia Mihic. "Neoliberalism and the Jurisprudence of Privacy: an experiment in feminist theorizing" (2008) *Feminist Theory*

**week 8 (March 3): Children as legal actors and rights holders**

- Sue Ruddick. At the Horizons of the Subject: Neo-liberalism, Neo-conservatism, and the rights of the child. Part One: From 'knowing' fetus to 'confused' child." *Gender, Place, Culture*, 2007.
- Sue Ruddick. At the Horizons of the Subject: Neo-liberalism, Neo-conservatism, and the rights of the child. Part Two: Parent, Caregiver, State." *Gender, Place, Culture*, 2007.
- Maya Manian. "Minors, Parents, and Minor Parents." (2016) *Missouri Law Review*

- Marley McClean. "Children's Anatomy v. Children's Autonomy: A Precarious Balancing Act with Preimplantation Genetic Diagnosis and the Creation of " Savior Siblings." (2016) *Pepperdine Law Review*

### **week 9 (March 10): Animal Rights and Political Theory**

- Sue Donaldson & Will Kymlicka. *Zoopolis: A Political Theory of Animal Rights* (2011) Oxford University Press

### **week 10 (March 17): Animal Rights and Legal Personhood**

- Taimie Bryant. "Sacrificing the Sacrifice of Animals: Legal Personhood for Animals, the Status of Animals as Property, and the Presumed Primacy of Humans." 2008 *Rutgers Law Journal*
- Ani Satz. "Animals as Vulnerable Subjects: Beyond Interest-Convergence, Hierarchy, and Property." 2009 *Animal Law*
- Beaudry, Jonas-Sébastien. "From Autonomy to Habeas Corpus: Animal Rights Activists Take the Parameters of Legal Personhood to Court." *Global Journal of Animal Law* 1 (2016).
- Berg, Jessica. "Of Elephants and Embryos: A Proposed Framework for Legal Personhood." *Hastings Law Journal* (2007): 369.

### **week 11 (March 24): Legal Personhood for Trees and Rivers**

- Vines, Timothy, Ven Bruce, and Thomas Alured Faunce. "Planetary Medicine and the Waitangi Tribunal Whanganui River Report: Global Health Law Embracing Ecosystems as Patients." *Journal of law and medicine* 20 (2013): 528-541.
- Glenn Wright. "Animal Law and Earth Jurisprudence: A Comparative Analysis of the Status of Animals in Two Emerging Discourses." *Austl. Animal Protection Law Journal* (2013): 5.
- TBA

### **week 12 (March 31) Spring Break**

### **week 13 (April 7): Corporate Personhood**

- Jorczak, Jennifer. "Not Like You and Me: *Hobby Lobby*, the Fourteenth Amendment, and What the Further Expansion of Corporate Personhood Means for Individual Rights." *Brookings Law Review* 80 (2014): 285.
- Susanna Ripken. "Corporate First Amendment Rights After *Citizens United*: An Analysis of the Popular Movement to End the Constitutional Personhood of Corporations." *University of Pennsylvania Journal of Business Law* (2011): 209.

- Leo Coleman. "Corporate Identity in *Citizens United*: Legal Fictions and Anthropological Theory" (2014) *PoLAR: Political and Legal Anthropology Review*
- Stuart Kirsch. "Imagining Corporate Personhood" *PoLAR* 2014 (8 pages)

**week 14 (April 14): Stem cell research: rights of bodies**

- Ruha Benjamin. *People's Science: Bodies and Rights on the Stem Cell Frontier* (Stanford 2013)

**week 15 (April 21): Rights of the Dead: brain death, organ donation**

- Mary Roach: *Stiff: the Curious lives of Human Cadavers* (2003) Norton
- Shah, Seema K. "Piercing the Veil: The Limits of Brain Death as a Legal Fiction." *U. Mich. JL Reform* 48 (2014): 301.
- Smolensky, Kirsten Rabe. "Rights of the Dead." *Arizona Legal Studies Discussion Paper* 06-27 (2009).

**week 16: April 28 mini-Conference: Presentation of research papers (last day of class)**