

CENTRAL EUROPEAN UNIVERSITY  
DEPARTMENT OF GENDER STUDIES  
MA PROGRAM  
Winter Semester 2015–2016

Cross-listed with Political Science  
**Commodification of the Human Body**  
4 credits

Prof. Judit Sándor

Teaching Assistant: Heather Tucker  
Classes meet: on Mondays and on Wednesdays 13:30-15:10  
Office Hours: Vigyázó F. u. 2. Room No: 205  
Location: TBA

## **Course Description**

At the beginning of the twenty-first century the uses of the human body, its organs, tissues and cells are increasingly diversified. One can observe the worldwide presence of old uses and misuses of the human body, such as prostitution, organ trafficking, human trafficking but more and more also new forms of commodification, such as surrogacy and the sale of eggs. In biomedical research, in stem-cell research, and in assisted reproduction, the human body is asked to fulfill various scientific and commercial purposes ranging from essential life-saving treatments to aesthetic enhancement. Reflecting on these complex phenomena, this course will apply human-rights and gender-studies approaches to analyze academic texts and judicial cases on the commodification and commercialization of the human body in biobanks, tissue- and organ donation, biotechnological inventions, organ and egg trade, organ trafficking and tourism, and trafficking of women. These topics will provide a rich repertoire of social and legal questions for the lectures, seminars and film sessions during the winter semester.

### **COURSE ASSESSMENT**

Students are required to participate in the discussion of the legal and theoretical issues implicated in the literature and in the legal cases. Reading assignments and the schedule of the course are listed in the detailed syllabus. Course requirements include attendance at lectures and seminars.

**Evaluation:** active participation in seminar discussion, based on the required readings and seminar presentations (20% of the final grade); and a written take home essay (with a length of appr. 15,000 characters) (80 % of the final grade).

## LEARNING OUTCOMES:

1. Encouraging students to analyze the gender component in legal cases about the human body
2. Developing analytical skills in the field of reproductive rights and commercialization of the human body
3. Strengthening the students' capacity to understand and analyze relevant legal cases on commodification, organ, and egg trade
4. Assessing the impact of new commercial challenges on gender, minorities, and future generations

Basic reading materials for the course:

Braun, Kathrin (2011) *Between Self-Determination and Social Technology*. Bielefeld: Transcript Verlag

Donna Dickenson (2007) *Property in the Body*. Cambridge University Press

Dickenson, Donna (1997). *Property, Women and Politics: Subjects or Objects?* New Brunswick: Rutgers University Press and Cambridge: Polity Press.

Komesaroff, Paul A. (1995) *Troubled Bodies*. Durham: Duke University Press

Jean-Daniel Rainhorn, Samira El Boudamoussi (2015) *New Cannibal Markets: Globalization and Commodification of the Human Body*. Paris. Éditions de la maison des sciences de l'homme

Sheldon, Sally and Michael Thomson (1998) *Feminist Perspectives on Health Care Law*. London, Cavendish Publishing.

Steinbock, Bonnie (2002) *Legal and Ethical Issues in Human Reproduction*. Dartmouth: Ashgate.

## COURSE OUTLINE AND READINGS

*Week One – January 11-13, 2016*

### **The Human Body and the Law: Introduction to Scope and Methods**

Human beings are legal subjects, and their bodies and body parts are potentially legal objects. The human body constitutes the physical embodiment of the self, inextricable from our very being. It is potentially a laborer, performing different functions essential to fulfill the goals of the person and cannot itself be property. But human bodies include and produce commodities, spare parts available for occasional donation for therapeutic, research and even commercial uses.

*Required:*

Andrew Wancata (2004) *No Value for a Pound of Flesh: Extending Market-Inalienability of the Human Body* in: 18 J.L. & Health 199

Ackerly, Brooke A. (2008) *Feminist Curb Cutting: A Methodology for Exposing Silences and Revealing Differences for the Immanent Study of Universal Human Rights*. In *Universal Human Rights in a World of Difference*. Cambridge: Cambridge University Press, pp. 125-154

Jasper A. Bovenberg (2006) *Property Rights in Blood, Genes and Data: Naturally yours?* Martinus Nijhoff Publishers, Leiden 37-72.

*Recommended:*

Thomson, Judith Jarvis (2001[1971]) *A Defense of Abortion*. In John Harris (ed.) *Bioethics*. Oxford: Oxford University Press, pp. 25-42.

Thomson, Judith Jarvis (1971) *A defense of Abortion* in: D. Kelly Weisberg (1996) *Sex, Violence, Work, and Reproduction Applications of Feminist Legal Theory to Womens' Lives*. Temple University Press Philadelphia 971-984

*Week Two – January 18-20, 2016*

**Gender and Reproduction in Law: Personal Rights, Property Rights**

The emergence of various reproductive technologies (such as in vitro fertilization, gamete donation, sex selection, surrogacy, cloning, or pre-implantation genetic tests) is often perceived inconsistently by the general public as well as by policy-makers. Moreover, social recognition and acceptability also changes as our views on biological and social kinship evolve. In addition to the discussion of new reproductive rights and choices, policies on contraception, abortion and sterilization will also be analyzed through academic literature and prominent legal cases.

*Required:*

Nancy Ehrenreich (1996) "The Colonization of the Womb" in: D. Kelly Weisberg (1996) *Sex, Violence, Work, and Reproduction Applications of Feminist Legal Theory to Women's Lives* Temple University Press Philadelphia 895-907

Judit Sándor (2015) *Commodified Bodies: is it a Gender Issue?* In: Jean-Daniel Rainhorn, Samira El Boudamoussi *New Cannibal Markets Globalization and Commodification of the Human Body*: Éditions de la maison des sciences de l'home, Foundation Brocher Paris 325-341

Cases: *Tysiāc v. Poland* (2007)

*R. and R v. Poland* (2011)

*Parrillo v. Italy* (Application no. 46470/11)

*Week Three – January 25-27, 2016*

**Law and Motherhood**

Nancy Chodorow has noted that being a mother means something more than the physical act of bearing a child; it also means socializing and nurturing that child. Because the ideal form of motherhood is unattainable for most women, women are set up to constantly attempt and consistently fail at modeling themselves according to this ideal.

The ideal mother is also used to justify restrictions and legal interventions on women's liberties and citizenship.

*Required:*

Meredith, Sheena (2005) *Policing Pregnancy: The Law and Ethics of Obstetric Conflict*. Aldershot: Ashgate, pp.5–37.

Annette Ruth Appell (2009) *Child-Centered Jurisprudence and Feminist Jurisprudence: Exploring the Connections and Tensions: The Pre-Political Child of Child-centered Jurisprudence in: 46 Houston Law Review 703.*

*Recommended:*

Blankenship, Kim M., Beth Rushing, Suzanne A. Onorato, and Renee White (1993) *Reproductive Technologies and the U.S. Courts*. In: *Gender and Society*, Vol. 7, No. 1. (Mar. 1993), pp. 8–31.

Slaughter, M.M. (1995) *The Legal Construction of 'Mother'*. In Martha Alberston Fineman, and Isabel Karpin, eds. *Mothers in Law*. New York: Columbia University Press, pp.73–100.

Cases: *P. and S. v. Poland* (application no. 57375/08)

*Week Four –February1-3, 2016*

**Organ Tourism, Organ Trade, Organ Trafficking**

Due to the development of transplant surgery and medicine, human kidneys, hearts, lungs, livers, pancreases, intestines, corneas, skin, cardiovascular tissue, bones, veins, cartilage, have become all transplantable today, and stem cells, blood, platelets, sperm, eggs, and embryos are all transferable from one human body for use in another. These new technologies have created increased demand for human organs and tissues in such a magnitude that needs for organs are often fulfilled by illegal cross-border trade and even by organ trafficking. This phenomenon raises issues of international justice, enforcement and legal harmonization.

Ranee Khooshie Lal Panjabi (2010) *The Sum of A Human's Parts: Global Organ Trafficking in the Twenty-First Century* In: 28 *Pace Env'tl. L. Rev.* 1

Phil Dyer and Shelagh McGuinness (2011) *The allocation of organs: the need for fairness and transparency in: Anne-Maree Farrell, David Price, Muireann Quigley (2011) Organ Shortage Ethics, Law and Pragmatism* Cambridge: Cambridge University Press 122-138.

Nancy Scheper-Hughes *the Ends of the Body: Neocannibalism and Military* (2015) in: In: Jean-Daniel Rainhorn, Samira El Boudamoussi *New Cannibal Markets Globalization and Commodification of the Human Body: Éditions de la maison des sciences de l'home*, Foundation Brocher Paris 243-263.

Margaret Lock (2002) *The Social Life of Human Organs. In Twice Dead: Organ Transplants and the Reinvention of Death*. Berkeley: University of California Press, 315–341.

Film Session (Optional) *Dirty Pretty Things* (Stephen Frears)

*Week Five – February 8-10, 2016*  
**Sex Trafficking, Mail Order Bride Industry, Prostitution**

The most widespread form of human trafficking involves involuntary sexual servitude, which includes forcing trafficking victims into prostitution.

*Required:*

Siddharth Kara (2009) *Sex trafficking Inside the Business of Modern Slavery* New York: Columbia University Press 1-44

*Recommended:*

Siddharth Kara (2009) *Moldova and Former Soviet Union In: Siddharth Kara (2009) Sex trafficking Inside the Business of Modern Slavery* New York: Columbia University Press 108- 129

Jeffreys, Sheila (2009) *The industrial vagina: the political economy of the global sex trade* London, New York, Routledge

Film Session (Optional)

*Bought and Sold: Russian Sex Trade*

"Bought & Sold" is an investigative documentary based on a two year undercover investigation conducted by Global Survival Network (GSN) about the illegal trafficking in women from the Former Soviet Republics. Features interviews with traffickers, Russian mafia, trafficked women, and groups working to provide services to trafficked women.

Cases: ECtHR *Rantsev v. Cyprus and Russia* (Application no. 25965/04)

*Week Six –15-17 February, 2016*  
**Organ and Egg Tourism**

Transplant tourism is a frequently organized global process. There are several internet sites that advertise "transplant packages", which can include the organ, transplant, travel, hotel stay, and medical care. The countries in which the transplantations are performed facilitate the operations. Often the transplant is performed in a hospital environment with a qualified physician. It gives to the clients the impression that everything is legal.

*Required:*

Erica D. Roberts (2009): *When the Storehouse is Empty, Unconscionable Contracts Abound: Why Transplant Tourism Should Not Be Ignored* in: 52 *How. L.J.* 747

Etti Samama (2015) *Within Me, but Not Mine* In: Jean-Daniel Rainhorn, Samira El Boudamoussi (2015) *New Cannibal Markets: Globalization and Commodification of the Human Body*. Paris. Éditions de la maison des sciences de l'homme 123-140.

*Recommended:*

Glenn Cohen (2010) Protecting Patients with Passports: Medical Tourism and the Patient-Protective Argument in: 95 Iowa L. Rev. 1467

Film Session: Google baby (2009 (Optional) directed by Zippi Brand Frank

*Week Seven –22-24 February, 2016*

**Egg Trade, Baby Sale**

Human reproductive technologies and stem cell research require a massive supply of human eggs. Human egg donation raises issues of commodification and exploitation that the law attempts to minimize. Babies born as a result of surrogacy agreements and embryo donation are subjects of private agreements often beyond the scope of law, international adoption pose legal challenges as to enforceability, transparency, exploitation and privacy.

*Required:*

J. Brad Reich & Dawn Swink (2011) Outsourcing Human reproduction: Embryos & Surrogact Services in the Cyberprocreation Era: in: *Journal of Health Care Law & Policy* 14 J. Health Care L. & Pol'y 241

Karsjens, Kari L. (2001) Boutique Egg donations: A New Form of Racism and Patriarchy. *DePaul Journal of Health Care Law*, vol. 5, pp. 57–89.

*Recommended:*

Carroll, Andrea B. (2011) Re-Regulating the Baby Market: A Call for a Ban on Payment of Birth-Mother Living Expenses. *Kansas Law Review*, vol. 59, no. 2, pp. 285–329.

*Cases:*

*In re Baby Girl D.*, 517 A.2d 925 (Pa. 1986);

*DeJesus v. State*, 889 S.W.2d 373 (Tex. App. 1994);

*Thacker v. State*, 889 S.W.2d 380 (Tex. App. 1994).

*Week Eight – 29 February-2 March, 2016*

**Social, Gestational and Genetic Parenthood**

The prohibition of forms of surrogacy that do not entail financial gains is not self-evident. The worrying fact that, in addition to father and mother, a third person is also involved in reproduction, is no longer deemed a strong enough argument for prohibition. Considering the wide range of other reproductive technologies, we must conclude that these also involve third persons different from the raising parents, namely the gamete donors. Such procedures include assisted insemination with donor sperm, fertilisation in vitro with egg; embryo donation is authorised as well. Examining individual causes of infertility, we find the weird contradiction that the reproductive rights of a woman who has an egg but no uterus are recognised to a lesser extent than those of a woman who has a uterus but no egg or for whom it is more difficult to conceive a child.

*Required:*

Tong, Rosemarie (1995) *Feminist Perspectives and Gestational Motherhood: The Search for a Unified Legal Focus*. In Joan C. Callahan, ed. *Reproduction, Ethics, and the Law*. Bloomington: Indiana University Press, pp. 55–80.

*Recommended:*

Overall, Christine (1995) *Frozen Embryos and ‘Fathers’ Rights’: Parenthood and Decision-Making in the Cryopreservation of Embryos*. In Joan C. Callahan, ed. *Reproduction, Ethics, and the Law*. Bloomington: Indiana University Press, pp. 178–198.

Ragoné, Heléne (1999) *The Gift of Life: Surrogate Motherhood, Gamete Donation, and Construction of Altruism*. In Linda L. Layne, ed. *Transformative Motherhood*. New York: New York University Press, pp. 65–89.

Cases: *Johnson v. Calvert*, 5 Cal. Rptr. 2d 494

*Week Nine –7-9 March, 2016*

**“Patents on Life”**

What are the differences in the legal and ethical status of *in vitro* embryo and *in vivo* fetus? What are the implications of such a distinction? What constitutes “industrial use” in case of research conducted on the human embryo. Should intellectual property law take into account the moral implications and consequences of biotechnology?

*Required:*

*Cases:*

In Case C-34/10 *Oliver Brüstle v Greenpeace e.V.*  
Myriad Case

*Week Ten –15-17 March, 2016*

**Enhancement, Perfection and Commodification**

It is more and more difficult to draw a justifiable line between the therapeutic enhancement and the commodification of the human body. Certain forms of enhancement inevitably raise the question of commercialization and fairness in sports, employment and in other fields of life.

*Required:*

Rothschild, Joan (2005) *The Parents: Only the Best and the Brighest*. In *The Dream of the Perfect Child*. Bloomington: Indiana University Press, pp. 111–131.

*Recommended:*

Sandel, Michael J. (2007) *The Case Against Perfection*. Cambridge, Mass: Harvard University Press.

Lindee, M. Susan (2003) Provenance and the Pedigree: Victor McKusick's Fieldwork with the old Order Amish. In Alan H. Goodman, Deborah Heath, M. Susan Lindee, eds. *Genetic Nature/Culture: Anthropology Beyond the Two-Culture Divide*. Berkeley: University of California Press, pp. 41–57.

*Week Eleven – 21-13 March, 2016*  
**Genetic Testing and Screening**

Many feminists and disability activists claim that genetic screening is a form of discrimination, while others regard these methods as new tools to protect women's and newborns' health and as providing an additional possibility for making an informed choice.

*Required:*

Storrow, Richard F. (2009) Therapeutic Reproduction and Human Dignity. *Law & Literature*, vol. 21, no.2, pp. 257–274.

*Recommended:*

Rhodes, Rosamond (2002) Genetic Links, Family Ties, and Social Bonds: Rights and Responsibilities in the Face of Genetic Knowledge. In Richard Sherlock and John D. Morrey, eds. *Ethical Issues in Biotechnology*. Lanham: Rowman & Littlefield, pp. 419–437.

Cowan, Ruth Schwartz (2008) Parents, Politicians, Physicians, and Priests. In *Heredity and Hope: The Case for Genetic Screening*. Cambridge: Harvard University Press, pp. 181–222.

Habermas, Jürgen (2003) *The Future of Human Nature*. Cambridge: Polity Press, pp. 29–74.

*Week Twelve – 28-30 March, 2016*  
**Reproducing Cells and Tissues and the Case of Biobanks**

The term 'reproduction' has gained a new meaning from the possibility of harvesting and producing cells for the purposes of therapy. Gender issues emerge even on the cellular level: for instance, in the use of a human egg, the way in which egg donors are recruited, how human eggs are used as raw materials, and the impacts of the market of regenerative medicine that sells hope for new therapies often already in the obstetrical ward.

*Required:*

Miller, John (2003) A Call to Legal Arms: Bringing Embryonic Stem Cell Therapies to Market. *Albany Law Journal of Science & Technology* vol. 13, no. 2, pp. 555–592.

*Recommended:*

Sunder Rajan, Kaushik (2006) Promise and Fetish. Genomic Facts and Personalized Medicine, or Life Is a Business Plan. Chapter 4 in *Biocapital: The Constitution of Postgenomic Life*. Durham: Duke University Press, pp. 138–181.

Nuffield Council's Report on Ethics and Stem Cells, available at [http://www.nuffieldbioethics.org/go/ourwork/stemcells/publication\\_304.html](http://www.nuffieldbioethics.org/go/ourwork/stemcells/publication_304.html)



Devolder, Katrien (2005) *The Ethics and Regulation of Human Embryonic Stem Cell Research: A Critical Analysis of the Debate*. Dissertation text available at <http://www.bioethics.ugent.be/index.php?id=3&type=file>

Cases: *Sherley v. Sebelius* case

## Conclusions

Discussion and assessment, preparation for the final essay.

## FURTHER LITERATURE [OPTIONAL]

- Callahan, Joan C. ed. (1995) *Reproduction, Ethics and the Law: Feminist Perspectives*. Bloomington: Indiana University Press.
- Coliver, S., ed. (1995) *The Right to Know: Human Rights and Access to Reproductive Health Information*. London and Philadelphia: University of Pennsylvania Press.
- Dickenson, Donna (1997) *Property, Women and Politics: Subjects or Objects?* New Brunswick: Rutgers University Press and Cambridge: Polity Press.
- Gostin, L. O. (2000) *Public Health Law: Power, Duty and Restraint*. Berkeley: California University Press.
- Holmes Bequaert, Helen, ed. (1994) *Issues in Reproductive Technology*. New York and London: New York University Press.
- Kaplan, Lawrence and Rosemarie Tong (1994) *Controlling Our Reproductive Destiny: A Technological and Philosophical Perspective*. Cambridge: MIT Press.
- Lemke, Thomas (2011) *An Advanced Introduction Biopolitics: Medicine, Technoscience, and Health in the 21st Century* New York: New York University Press
- Lundin, Susanne (1996) *Power over the Body*. In Susanne Lundin and Lynn Akesson (eds.) *Bodytime: On the Interaction of Body, Identity, and Society*. Lund: Lund University Press, pp. 13–35.
- Rowland, Robyn (1992) *Living Laboratories: Women and Reproductive Technologies*. Bloomington: Indiana University Press.
- Sándor, Judit (2002) *Reproduction, Self and State*. *Social Research*, vol. 69, no 1 (Spring 2002), pp. 115–141.
- Sheldon, Sally and Michael Thomson eds. (1998) *Feminist Perspectives on Health Care Law*. London: Cavendish Publishing.
- Thomson, Judith Jarvis (2001[1971]) *A Defense of Abortion*. In John Harris (ed.) *Bioethics*. Oxford: Oxford University Press, pp. 25–42.
- Thomson, Judith Jarvis (1971) *A defense of Abortion* in: D. Kelly Weisberg (1996) *Sex, Violence, Work, and Reproduction Applications of Feminist Legal Theory to Womens' Lives* Temple University Press Philadelphia 971-984

Cases:

*Attorney General v. X*. (1992) Supreme Court of Ireland

*Canterbury v. Spence* (1972) 464 F. 2d 772

*Griswold v. Connecticut* (1965) 381 US 479

*Korn v. Potter* (1996) 134 DLR 9 4<sup>th</sup> 437

*Open Door Counselling and Dublin Well Women v. Ireland* (1992) 15 EHRR 244

*R. v. Human Fertilisation and Embryology Authority* ( 1997) ax p. Blood 2 All ER 687 (Court of Appeal, England)  
*R. v. Morgentaler* (1988) 44 DLR 4<sup>th</sup> 385 (Supreme Court of Canada)  
*Roe v. Wade* (1973) 410 US 113  
*Royal College of Nursing of the United Kingdom v. Department of health and Social Security*  
*X & Y v. The Netherlands* (1986) 8 EHRR 235