This seminar explores some major issues about the legal construction and regulation of human sexuality, focusing mainly on law’s response to the diversity of sexual orientation. We will consider the nature and importance of human sexuality, law’s influence on sexual identities, liberty in sexual activity and association, freedom of sexual speech, the role of consent in sex, and the demands of legal equality in selected areas such as employment and marriage. The approach of the seminar blends theoretical and doctrinal work, and the readings include some comparative material from other common-law jurisdictions.

Course Requirements and Evaluation:

You are required to attend class and to be prepared to participate in discussion. Evaluation is based on three elements:

(a) Weekly Comments (10%) due by noon every Tuesday:
Each week, by noon of the Tuesday before our class, you are required to post a one-page (double-spaced) comment to the Discussion Board section of our Blackboard site. (You can find the Board through the links >Communications>Discussion Board.) Your comment should be a critical reflection on any claim or argument in that week’s materials that strikes your interest and bears on the seminar question for that week. Your comments will be evaluated as a whole, and will be discussed in class. You may without penalty take a “pass” and post no comment for any two of the seminars, provided you email me in advance to tell me that you are doing so.

(b) Bibliographic Note (10%) due on November 15th in class
This six page note, in preparation for your term paper, will briefly discuss the main sources you plan to discuss and will sketch the direction of argument that you plan for your paper. Detailed instructions are posted on Blackboard under >Assignments

(c) Term Paper (80%) due by Dec 15th, at 12:00 noon
Your major piece of work is a paper of about 6,000 words on any topic within the purview of this seminar, provided it makes use of some of the required readings for the seminar, and attempts to answer a question approved by me in advance. (I will post some possible topics on Blackboard.) It may be doctrinal or theoretical in approach; it may be a blend of both.
Text and Materials:

The required text is William B. Rubenstein, ed., *Cases and Materials on Sexual Orientation and the Law*, 2nd ed. (St. Paul, MN: West Group, 1997) The *Supplement* to these materials is useful, though not necessary, as I’ll post the newer cases along with some other required materials on Blackboard and also make them available on Reserve. (These are marked * below.)

**SEMINAR TOPICS AND READINGS**

1. **What are sex, gender, and sexuality, and how are they related?**
   Rubenstein, 1-40

2. **What was “sodomy” and why was it criminalized?**
   Rubenstein, 81-91, 146-61

3. **Are sexualities “socially constructed”; if so, by what?**
   Rubenstein, 40-64, 124-39
   *Leslie Green, “How Could Sexuality be Socially Constructed?” (draft)

4. **What is the public interest in regulating sexual conduct?**
   Rubenstein, 161-79

5. **How significant was *Lawrence* for lesbian and gay rights?**
   Rubenstein, 179-205, 217-251

6. **What is valuable about sexual liberty?**
   Rubenstein, 265-81
7. Is every form of consensual adult sex permissible?

8. Is there a right to produce or use straight pornography?
*R. v. Butler, 1 SCR 452 (1992)

9. Is there anything morally or politically distinctive about gay pornography?

10. What could be wrong with discrimination on grounds of sexual orientation?
Rubenstein, 428- 454, 461-473, 481-505

11. How far may private organizations discriminate on grounds of sexual orientation?
Rubenstein, 382-94
*Trinity Western University v. British Columbia College of Teachers, 1 SCR 772 (2001)

12. Does equality require sex-neutral marriage?
Rubenstein, 119-23, 705-708, 716-727
*Leslie Green, “Sex and Marriage” (draft)

13. How far should courts intervene in the debate about the marriage?
Rubenstein 709-716, 727-747, 751-771
*Opinions of The Justices To The Senate (Mass) 440 Mass. 1201, 802 N.E.2d 565