How has the law constructed "family" relationships? What is the scope of state regulation of the relationships between married spouses, unmarried cohabitants, opposite sex and same sex couples? Should anyone be denied a “right” to marry? Is there a fundamental right to marry? How are marital and non-marital relationships affected by different public policies and socio-cultural values? Should married couples be allowed to divorce? How has the law responded to changes in our psychological understanding of adult-to-adult and adult-to-child relationships? What are the historical, constitutional, common law, and statutory antecedents of contemporary notions of “family privacy,” “parental autonomy,” “parens patriae,” and a child's “best interests”? Should children have legal rights, and, if so, rights to what and against whom? How does the State determine the legal parentage of children? When should the State intervene in families to protect children against abusive or neglectful parents? Should public policy on behalf of neglected children focus on preservation of their original families or on expediting their permanent adoptive placement? These and similar questions will be explored through a variety of readings in law and the social sciences.

The required readings are:

Course Reader. Three Readers: The first two readers are currently available from Copy Central, 2560 Bancroft Way. The third reader will be available in late-October. A copy of the Readers has been placed on Reserve in the UGL.

Supplementary materials will be posted on b-space or distributed in class.

Your final grade in this course will be based on the following:

- First Midterm, Tuesday, October 4 in class: Approx. 20 %
- Second Midterm, Tuesday, November 15, in class: 30 %
- Final Exam, Friday, December 16, 8:30-11:00 a.m.: 35 %
- Section attendance and participation: 15 %

The exams will be open-book and will be highly structured essay questions based on the lectures and on the assigned readings. Although you are expected to attend ALL of the lectures and section meetings, you will not be penalized for missing a class to observe a religious holiday or because of illness or other special circumstances.

Professor Hollinger’s office hours are Tuesday, 3:00-5:00 p.m. in Boalt Hall Room 465, or by appointment, 642-1419; jhollinger@law.berkeley.edu Our GSIS, Hannah Alsgaard and Lauren
Maisel will schedule their own office hours.
**Readings in Course Reader Volume 1**

**Part I. Introduction: Aug 25-30**

**The readings for Part I.A on pages 7-47 of Vol 1 are background materials. Please skim them now and return to them for a more careful reading later in the semester. Additional data on families and children are posted in a folder on our b-space Resources page**

A. What is Happening to Children and Families in the United States?


U.S. Census Snapshot Dec 2007: Same-Sex Couples and the LGBT Population
ChildStats. 2011 Highlights
America’s Children: Key Indicators 2009
NCCP, Who are America’s Poor Children? (2007)

**Aug 30: pages 51-68**

B. Effects of Government Policies on “Fragile Families”

Policy Brief: Strengthening Fragile Families 2010
Fragile Families Research Brief #23: “His” and “Her” Marriage Expectations

**Part II. Legal Regulation of Marriage and The Family**

**Sep 1-8: pages 71-120**

A. Traditional Restrictions

Note: Who Can Marry?
California Family Code: Valid & Void Marriages

B. Constitutionality of Marriage Restrictions

*Perez v. Sharp* (Cal. Supreme Ct. 1948)
*Loving v. Virginia* (U.S. 1967)
C. Incest Prohibitions

*Singh v. Singh* (1990)
*Back v. Back* (1910)
Claude Levi-Strauss, Excerpts
Margaret Mead, Excerpts & Notes
Denise Grady, *Few Risks Seem to the Children of First Cousins*, NY Times, April 4, 2002, A1

D. Age Restrictions

Note on Marital Age
L. Wardle, Rethinking Marital Age Restrictions

E. Prohibition of Polygamy and Bigamy

*In re Black* (Utah 1955)
W.S. Maloney, Arizona Raided Short Creek & Notes
Neil Young, *Short Creek’s Long Legacy*, Slate, April 16, 2008
E. Joseph, *My Husband's Nine Wives*
*In re Steed* (Tx Ct App 2008)
August 2009 Update on LDS Custody Cases in Texas
Warren Jeffs convicted in Texas of child sexual assault, Aug 2011
Part III. Marriage: Spousal Roles, Rights, Responsibilities

Sep 22: pages 190-199

A. The Traditional Model of Marriage

*Graham v. Graham* (1940)
Blackstone on the status of married women at common law

B. The Doctrine of Family Privacy

*McGuire v. McGuire* (1953)
Excerpt from L.E. Teitelbaum, 1985 Wis L.Rev.

Sep 22-27: pages 201-239

C. Family Privacy as “Cover” for Domestic Violence?

*State v. Rhodes* (1868)
Hoffman, *When Men Hit Women*
B. Horsburgh, *Domestic Violence in the Jewish Community* (1995)
Note on Legal Responses to Domestic Violence
S. Lewis, *U.S. Supreme Court decides there is no constitutional right to enforcement of restraining order*, Wisc Law J., July 6, 2005
Spousal Tort Liability: *Burns v. Burns* (Miss. 1988)
Federal Response: Violence Against Woman Act of 1994 (VAWA)
Note July 2005: Mobilization to convince Congress to reauthorize VAWA

Sep 27-29: pages 240-278

D. Challenging and Defending the Traditional Model of Marriage
Stephanie Coontz, *The Heterosexual Revolution*, NY Times, July 5, 2005
*For Better, For Worse, Marriage Means Something Different Now*, Wash. Post, May 1, 2005
Mary Lyndon Shanley, *Just Marriage: On the public importance of private unions*

*Marvin v. Marvin* (Cal. 1976)
*Marvin Rejected in Hewitt v. Hewitt* (Ill. 1979) and *Notes*
Ira Mark Ellman, *“Contract Thinking” was Marvin’s Fatal Flaw*, 76 Notre Dame L. Rev. 1365 (2001)
The Status Alternative: ALI Proposals for Domestic Partners
A Defense of Marriage by Conservative Scholars, 2006

**Tuesday, October 4: FIRST MIDTERM EXAM IN CLASS**

**Starting on Thursday, October 6, we will discuss the final section of Part II. The Regulation of Marriage…..The readings are in Vol II of the Course Reader as supplemented by cases and materials posted on the Resources page of our b-space site.**

**Part II.F: Should Sexual Orientation Be A Basis for Excluding People from Civil Marriage?**

**Oct 6: Overview pages 7-64**

1. Marriage, Domestic Partnerships, and Civil Unions for Same-Sex Couples:

   Map: Overview of Relationship Recognition, 2010
   Same Sex Couples in Census 2010
      California Census Snapshot 2010
      Illinois Census Snapshot 2010
      New York Census Snapshot 2010
   Overview of Recent Developments, August 2011
   Note: Three important public policy purposes served by marriage
   Evan Wolfson, *Does Our Country Need “Gay Marriage”?* 2004
   Marriage, Registration and Dissolution by Same-Sex Couples
      In U.S. (Williams Ins. July 2008)
   T. Parker-Pope, *Gay Unions Shed Light on Gender in Marriage*, NY Times, June 10, 2008
   *Love or Country?* Aug 2010
   *Gay Old Times*, New Yorker, Sept. 2, 2002
   Announcements of Gay Couples’ Commitment Ceremonies & Marriages in NY Times
Oct 11: pages 67-106

2. The Constitutional and Political Legacy of the 1990’s:

- *Baehr v. Lewin* (Hawaii 1993) Note on
- U.S. Congress Enacts Defense of Marriage Act (DOMA), 1996
- Several Federal Court Cases Challenging DOMA 2010
- Attorney General Holder Letter to Congress: DOJ will not defend DOMA


Oct 13-18: pages 109-168


- Emily Bazelon, *Holy Matrimony*, Slate, April 7, 2004
- Proposed Federal Constitutional Amendment Relating to Marriage
- S. Dewan, United Church of Christ Backs Same-Sex Marriage, NY Times, July 5, 2005
- *Psychiatric Board backs same-sex marriage in 14-1 vote*, Aug. 2005

5. Massachusetts Court Allows Same-Sex Couples to Marry:

- Note: Mass. Repeals 1913 marriage law
Oct 18: pages 169-214

6. New York and Washington State Courts Uphold Marriage Restrictions:

   Hernandez v. Robles (NY Ct Appeals, July 2006)
   Andersen et al. v. King Co. (Wash. Sup. Ct, July 2006)
   Dan Savage, Same-Sex Marriage Wins by Losing, NY Times, July 30, 2006
   Dahlia Lithwick, How to make a thorny constitutional question disappear,
     Slate, July 26, 2006
   New York Legislature authorizes marriage by same sex couples: June 2011

7. New Jersey Punts: 2006-08
   Lewis v. Harris (N.J. 2006) excerpts
   Civil Unions in New Jersey: 6 month update

Oct 20: pages 216-254

8. California Teeters in All Directions:

   Prop. 22 (Knight Initiative) approved by 60% of voters in 2000
   UCLA Study Shows Why Same-Sex Couples with Children in California
     Need Marriage, 2004
   California: Latino Same-Sex Couples as Parents, UCLA Study 2005
   Domestic Partnership Laws extend marriage-like rights and duties to same-sex couples:
     San Francisco Trial Court Allows Surviving Same Sex Partner to File
     Wrongful Death Action, 28 July 2001
     AB25: Domestic Partners Benefits Boosted, October 2001
     AB 205: Domestic Partners Rights and Responsibilities Greatly
     Expanded, Sep. 2003
   California Supreme Court Upholds Domestic Partnership Law, June 2005
   Golf Club Case: Cal. Supreme Court says a “Domestic Partner” is same as a
     “Spouse” under state antidiscrimination laws.

The move toward full marriage rights since 2004:
   Dean Murphy, San Francisco Married 4,037 Same Sex Pairs From
     46 States, NY Times, March 18, 2004
   Patricia Leigh Brown, For Children of Gays, Marriage Brings Joy,
     NY Times, March 19, 2004
   Lee Romney, State's High Court Voids S.F. Same-Sex Marriages,
     LA Times, Aug 13, 2004

Oct 25-27: pages 257-310

9. The Constitutional Challenge to California’s Ban: 2004-08
Notes on Developments in California Marriage Cases 2005-08
Family Law Professors Amicus Brief in Marriage Cases [excerpts]
Doug Kmiec, *California Marriage Cases*—[criticizes Court’s decision], Volokh Conspiracy Blog, May 15, 2008
Doug Kmiec, *Why California Constitution Should be Amended* [Prop 8]
June 16, 2008: First legal marriages by same-sex couples begin in California

**Nov 1-3: pages 312-353 and excerpts from opinions by Judge Walker and Ninth Circuit on b-space**

10. **Proposition 8 Overrides Cal Marriage Cases: 2008-2009**

   Constitutional Law Professors Pam Karlan, Kathleen Sullivan and others
   Oppose Prop 8
   *Strauss v. Horton*: Cal Supreme Court upholds Prop 8 (May 2009)
   *Boies and Olson, Bush v. Gore Foes, Join to Fight Gay Marriage Ban* (2009)

11. **Perry v. Schwarzenegger, federal district court & beyond, 2009-2010**

   **Note: Judge Walker’s opinion is posted on LS 155 b-space site**
   Excerpts from Judge Walker’s opinion, Aug 4, 2010
   Summary of Judge Walker’s opinion
   Ross Douthat, *The Marriage Ideal* [a Catholic perspective] & responses
   From Andrew Sullivan [gay Catholic commentator]
   Fox News interview with Ted Olson, Aug 8, 2010
   Jon Davidson, Lambda Legal Director, *Post-Perry What-Ifs*, Aug 2010
   *Prop 8 Hangs by a Legal Thread*, LA Times, Aug 13, 2010
   SCOTUS.blog: *Standing Issue May be Decisive*, Aug 12, 2010
   Emily Bazelon, *The Best Way for Proposition 8 to Lose*, slate.com Aug 2010

12. **What next? [General Class Discussion on Nov 3]**

Nov 8-10: readings from Course Reader Vol III.

**Part IV. ESTABLISHING THE PARENT-CHILD RELATIONSHIP**

A. Who is a Father?
B. Who is a Mother?

Tuesday, November 15: SECOND MIDTERM EXAM IN CLASS

Nov 17-Dec 1: readings from Course Reader Vol III

C. Case Studies on parents versus “legal strangers” and children’s “best interests”

Friday December 16, 8:30-11:00 a.m.: FINAL EXAMINATION