This course examines the legal and social history of State regulation of sexual and reproductive behavior. We will consider why, as well as how, the legal system in this country is involved in efforts to control personal and intimate conduct. We will also consider whether there are, or should be, any “zones” of sexual or reproductive behavior that are protected against State scrutiny or control. These issues will be explored in the context of a number of specific legal and social conflicts, including sterilization, treatment of sexually transmitted diseases, access to contraception and abortion, adolescent sexuality and statutory rape, and the U.S. Supreme Court’s recent invalidation of State laws that criminalized homosexual sodomy. In addition, we will examine how regulating sex and reproduction affects children and fetuses, including the controversies about the disposition of “leftover” frozen embryos and the use of embryonic cells in stem cell research. The parentage of children born as a result of assisted reproductive technology (ART) and efforts by adopted and ART-children to acquire information about their biogenetic origins will also be discussed.

The required reading materials for the course are:

2. Course Reader: Volume Two Available in March from Copy Central
3. Additional materials distributed in class or posted on b-space course website

A copy of the reading materials will be on Reserve in the UGL.

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

First Midterm, Tuesday, February 14: 9:30–11:00 a.m. Approx. 20 %
Second Midterm, Thursday, March 15: 9:30-11:00 a.m. 30 %
Final Exam, Wednesday, May 09: 11:30-2:00 p.m. 35 %
Section attendance and participation 15%

The exams will be open-book essay questions based on Professor Hollinger’s lectures and on the assigned readings. You are expected to attend ALL of the lectures and section meetings, but 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 Wednesday 3:00-5:00 p.m. in Boalt Hall Room 465, or by appointment, 642-1419; Jhollinger@law.berkeley.edu. Our GSI, Luke Haqq will schedule his own office hours.
ASSIGNMENTS FROM COURSE READER, VOLUME ONE:

Part I. Mandatory Sterilization: For Whom?

Jan 17-24:

A. Eugenics and Justifications for Sterilizing the “Feebleminded”
   
   Buck v. Bell, 274 U.S. 200 (1927)
   
   Stephen Jay Gould, Carrie Buck's Daughter, excerpts
   
   Daniel J. Kevles, In the Name of Eugenics (1985), excerpts
   
   
   
   
   Dahleen Glanton, Sterile Victime Stand Up, Decry Legacy of Eugenics, Chicago Tribune, Sept 6, 2006
   
   Kim Severson, Thousands Sterilized, A State Weights Restitution, NY Times, Dec 9, 2011

B. Sterilization as Punishment for Habitual Criminals
   
   Skinner v. Oklahoma, 316 U.S. 535 (1942)

Jan 26-31:

C. Sterilization to “Protect” Developmentally Disabled Adults and Children
   
   Edmunds v. Edwards, 287 N.W.2d 420 (Neb. 1980)
   
   Conservatorship of Valerie N., 40 Cal.3d 143 (1985)
   
   Conservatorship of Angela D., 70 Cal. App.4th (1999)
   
   Tony Platt, Remarks to California Senate Judiciary Committee, June 2003
   
   Commentary: Forced Sterilization a Stain on California, Los Angeles Times, February 16, 2003
   
   Proposed Guidelines for Involuntary Sterilization
   
   New Illinois Law on Involuntary Sterilization, 2009

Part II. (Mis)Treating the Consequences of Sexual Activity: Illustrative Examples

Feb 2:

A. Syphilis and the Tuskegee “Experiment”
   
   Allen M. Brandt, The Tuskegee Syphilis Study (1978)
   
   President Clinton’s 1997 “apology”: news stories & editorials
   
Feb 2:

**B. Disposing of “Illegitimate” Babies**

- Regina G. Kunzel, *Fallen Women, Problem Girls*, excerpts
- Rickie Solinger, *Wake Up Little Susie* (1992), excerpts

Feb 7:

**C. Criminalizing Sodomy**

- Adam Liptak, *Kansas Law on Gay Sex by Teenagers Overturned*, NY Times, Oct 22, 2005

Feb 9:

**D. Statutory Rape**

- Cal. Penal Code § 261.5: Gender Neutral since 1993
- Patricia Donovan, *Can Statutory Rape Laws Be Effective in Preventing Adolescent Pregnancy?* Family Planning Perspectives (1997)
- San Mateo County DA Office website on Statutory Rape

**Tuesday, February 14: First Midterm Exam in Class**

**Part III. Recognizing and Limiting A Constitutional Right to Separate Sex from Reproduction**

Feb 16:

**A. Access to Contraception**

- Note on Reproductive Rights and Interests
- *Griswold v. Connecticut*, 381 U.S. 479 (1965) [excerpts]

**B. Access to Abortion**

- *Roe v. Wade*, 410 U.S. 113 (1973) [excerpts]

Feb 21:

**C. The Casey “Undue Burden” Test: Redefining and Limiting Women’s Access to Abortion**

1. Does notifying a prospective father unduly burden a woman’s right to choose?
   - *Planned Parenthood of Southeastern Pa. V. Casey* (U.S. 1992) [excerpts]
Note on Male Reproductive Control of Women Victims of Intimate Partner Violence

Feb 23:
2. Does Prohibiting “Partial-Birth” Abortion Unduly Burden a Woman’s Right to Choose?
   Frank Talk About Abortion, NY Times, editorial, Nov. 30, 2003
   William Saletan, Never Say Never, Slate, Feb 24, 2006
   Gonzales v. Carhart, 127 S.Ct. 1610 (2007) [excerpts from decision upholding validity of PBA Act of 2003]
   Dahlia Lithwick, Father Knows Best, Slate April 18, 2007
   Denying the Right to Choose, NY Times editorial, April 19, 2007
   Guttmacher Institute, Bans on “Partial Birth Abortion,” 2012

Feb 28:
3. Contemporary Abortion Data
   Who Has Abortions? (Guttmacher 2011)
   Who Has Second-Trimester Abortions (2012)
   Disparities in Unintended Pregnancy Grow: Dramatic Increases Among Poor Women (2011)

D. Scope of Minor Children’s Constitutional Rights to Contraception and Abortion

Feb 28-March 1:

Note on Judicial Bypass Procedures
Ex Parte Anonymous, a Minor, 803 So.2d 542 (Ala. 2002)
Steven Holmes, Court Puts Girls on the Stand in Alabama, NY Times, Jan. 20, 2003
Adam Liptak, On Moral Grounds, Some Judges Are Opting Out of Abortion Cases, NY Times, Sept 4, 2005
Andrew Lehren & John Leland, Scant Drop Seen in Abortion Rate if Parents Are Told, NY Times, Mar 6, 2006
Supreme Court Hears N.H. [teen] Abortion Case, Dec 2005
Note, Parental Involvement in Minors’ Abortions, 2012

Part IV. Regulating Adolescent Sex and Sexuality

Mar 6:
A. Adolescents Having Sex and/or Babies
2008 Kids Count Data on Teen Birth Rate
Sharp Decline in Ten Births 2009-2010
The Nation’s Health Web on Comparative Teen Pregnancy Rates
*Facts on American Teens’ Sexual & Reproductive Health*, Guttmacher 2011
*Facts on American Teens Sources of Information about Sex*, Guttmacher 2011
*Overview of Minors’ Rights to Make Sexual & Reproductive Health Decisions*
Hollinger & Guttmacher, 2012

Mar 8-13:

B. **Adolescent Sexuality: Cultural, Political & Religious Controversies**

Should Public Policies Aim to Prevent Teen Pregnancy? Profs Luker & Mauldon spar with each other

Margaret Talbot on Teen Sex in Red and Blue States [Excerpt]
Linda Hirshman, *Sarah Palin’s teenage daughter’s baby*, Slate, Sept 2, 2008

Stephanie Rosenbloom, *A Ring that Says No, Not Yet*, NY Times Dec 8, 2005
*Virginity Pledges Do Not Work, Yet Another Study Confirms*, Dec 30, 2008
*Mississippi, A Hotbed of Abstinence Education, Now Boasts Highest Teen Pregnancy Rate*, Jan 2009

*Teen Births, Two States, Two Approaches: Texas & California*
California laws on teens’ access to health care
Heather Boonstra, *California’s Efforts to Reduce Pregnancy Rate*, 2010

Patrick Welsh, *They’re Having Babies: Are We Helping?* Wash Post, Dec 14, 2008


*U.S. Keeps Restrictions on Sale of Morning-After Pill*, AP Dec 7, 2011
HHS Secretary Overrides FDA Decision on Emergency Contraception
M.Landler, *Obama Backs Limit on Sale to Teenagers of Morning-After Pill*, NY Times, Dec 8, 2011
*Plan B’s Good Boyfriend Dilemma*, slate.com Jan 2012
Thursday, March 15: Second Midterm Exam in Class

Part V. Women’s Rights versus Fetal Rights: Ongoing Constitutional & Socio-Political Controversy

Mar 20:

A, Mandatory Counseling and (Mis)Informed Consent

States Enact Record Number of Abortion Restrictions in 2011 (Overview)
James Glanz, Scientists Say Administration Distorts Facts, NY Times, Feb. 19, 2004 with EXCERPTS from UCS Report
Abortion Counseling versus Informed Consent Principles, Nov 13, 2007
APA Task Force Finds That Single Abortion Is Not A Threat To Women’s Mental Health, August 2008
New Study Debunks Research Suggesting that Abortion Leads to Mental Health Problems, 2010
Abortion & Mental Health: Update 2010-2011
Neela Banerjee, Church Groups Turn to Sonogram to Turn Women From Abortions, NY Times, Feb. 2, 2005
Emily Bazelon, The Dilemma Facing South Dakota’s Abortion Providers, Slate, Aug 19, 2008
Emily Bazelon, Oklahoma’s Paternalistic Ultrasound Law, Slate, Oct 22, 2008
Carol Sanger, Mandatory Ultrasound and the Path to a Protected Choice, Abstract 2008

Mar 22:

B. Holding Pregnant Women Liable for Fetal Neglect or Abuse

State ex rel. Angela M.W. v. Kruzicki, 561 NW2d 719 (Wis. 1997)
Whitner v. State, 492 SE2d 777 (SC 1997)
NOTES on Consequences of Whitner and Angela M.W.
Ferguson v. City of Charleston, 532 U.S. 67 (2001)
South Carolina Drug Treatment Programs (2009)
California child abuse/neglect laws do not treat fetus as “child”
Drug Abuse among Pregnant Women (NIDA Report 2011)

Spring Vacation: March 26-30

Apr 3:

C. Holding Women’s Bodies Hostage to the Goal of Protecting “Fetal Personhood”

Statements from Proponents of Mississippi Amendment 26 (2011)
W.Saletan, *Does Fetal Development Matter?* Slate.com Dec 1, 2011

ASSIGNMENTS FROM COURSE READER, VOLUME TWO WILL BE AVAILABLE IN LATE MARCH

April 5-19:

Part VI. *From Coitus to Commerce: Assisted Reproduction and the Marketing of Solutions to Infertility*

April 24-26:

Part VII. *Stem Cell Research and Therapeutic Cloning*

FINAL EXAMINATION: WEDNESDAY MAY 9, 11:30-2:00 P.M.