SYLLABUS

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 reader is currently available from Copy Central, 2560 Bancroft Way. The second and third readers will be available in late-September. 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:

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<thead>
<tr>
<th>Component</th>
<th>Percentage</th>
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<tr>
<td>First Midterm, Tuesday, October 2, in class</td>
<td>Approx. 20 %</td>
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<tr>
<td>Second Midterm, Tuesday, October 30, in class</td>
<td>30 %</td>
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<tr>
<td>Final Exam, Tuesday, December 11, 3:00-5:30 p.m.</td>
<td>30 %</td>
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<tr>
<td>Section attendance and participation</td>
<td>20 %</td>
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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 GSI, Giuliani Perrone, will schedule her own office hours.
Readings in Course Reader Volume 1

Part I. Introduction: Aug 23-28

**The readings for Part I.A on pages 6-29 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 are posted in the folder, Families & Children: Demographic Data on our b-space Resources page**

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

U.S. Census Snapshot Dec 2010: Same-Sex Couples and the LGBT Population
*America’s Children in Brief*: 2012 Highlights
NCCP, *Who are America’s Poor Children?* (2011)
Fragile Families Fact Sheet

Aug 28: pages 31-57

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

Aug 30 – Sep 4: pages 59-109

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)
*Mildred Loving Dies at 68*, NY Times, May 6, 2008
Brent Staples, *Sen. Strom Thurmond’s Deception Ravaged Two Lives*,  
NY Times Op-Ed, Dec 26, 2003  
Sam Roberts, *Black Women See Fewer Black Men at the Altar*, NY Times, June 2010  

Zablocki v. Redhail (U.S. 1978)  
*Turner v. Safley U.S. 1987*

Sep 6: pages 111-138

**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  

Sep 11-13: pages 140-179

**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*  
S. Paynter, *Polygamy Cases Highlight Society’s Confusion over Age of Consent*,  
Seattle Post-Intell, Aug 6, 2007  
*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  

F: Should Sexual Orientation Be A Basis for Excluding People from Civil Marriage? THE
READING MATERIALS FOR THIS PART ARE IN COURSE READER Vol II. We will discuss them during October

Part III. Marriage: Spousal Roles, Rights, Responsibilities

Sep 18: pages 181-190

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 18-20: pages 192-229

C. Family Privacy as “Cover” for Domestic Violence?
State v. Rhodes (1868)
D. Davenport, The Need for Macho Men, Cosmopolitan, 1977
Hoffman, When Men Hit Women
B. Horsburgh, Domestic Violence in the Jewish Community (1995)
K. E. Holmes, Philadelphia Muslims Take Stance against Abuse, Chicago Tribune, Aug. 10, 2005
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 25-27: pages 231-269

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 2: FIRST MIDTERM EXAM IN CLASS**

Starting on Thursday, October 4, we will discuss the final section of Part II. The Regulation of Marriage: ..The readings will bee 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 4: Overview**

1. Marriage, Domestic Partnerships, and Civil Unions for Same-Sex Couples:
   - Map: Overview of Relationship Recognition
   - Same Sex Couples in Census 2010
     - California Census Snapshot 2010
     - Illinois Census Snapshot 2010
     - New York Census Snapshot 2010
   - Overview of Recent Developments, August 2012
   - Note: Three important public policy purposes served by marriage
   - Marriage, Registration and Dissolution by Same-Sex Couples
     - 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 9:**

2. The Constitutional and Political Legacy of the 1990’s:
   - *Bahr 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
   Baker v. Vermont (Vt. 1999)
   C. Goldberg, Gay & Lesbian Couples Head for Vermont, NYT July 2000
   Andrew Sullivan, Why Civil Unions Aren’t Enough, New Republic, 2000

   Lawrence v. Texas (U.S. 2003) Excerpts
   Gay Marriage is Immoral, Vatican Says, LA Times, Aug. 1, 2003
   Emily Bazelon, Holy Matrimony, Slate, April 7, 2004
   Proposed Federal Constitutional Amendment Relating to Marriage
   Mark D. Agrast, A Constitutional End-Run, July 21, 2004
   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

Oct 11:
5. Massachusetts Court Allows Same-Sex Couples to Marry:
   Goodridge v. Dep’t of Public Health (Mass. 2003)
   Pam Belluck, Hundreds of Same-Sex Couples Wed in Massachusetts,
   New York Times, May 18, 2004
   Andrew Sullivan, My Big Fat Straight Wedding, Atlantic.com, Sept 2008
   Note: Mass. Repeals 1913 marriage law
   T. Kelley, New York Gay Couples Head to Massachusetts, NY Times,
   Aug 2, 2008

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
   UPDATE: New York Legislature authorizes marriage by same sex couples: June 2011
   Washington Legislature authorizes marriage by same-sex couples 2011-12

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

Oct 16-23:
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
- 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
- Lee Romney, *State's High Court Voids S.F. Same-Sex Marriages*, LA Times, Aug 13, 2004

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

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)

11. **Perry v. Schwarzenegger, Federal District Court Trial and Decision 2010**

**Note:** Judge Walker’s opinion is posted on LS 155 b-space site as are reactions to the trial testimony by law students

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 Director, *Post-Perry What-Ifs*, Aug 2010

Rules Prop 8 Unconstitutional using *Romer* 14th Am. Eq Pro Analysis

   *Perry v. Brown* (USCA 9th 2012) excerpts
Prop 8 Proponents seek review by U.S. Supreme Court: Fall 2012

Oct 25:

13. Recent Developments

DOMA Litigation: Excerpts from Gill, Golinski, Windsor, Pedersen and Hollinger Briefs
   *Obama Says Same-Sex Marriage Should be Legal*: May 2012
   *First Gay Wedding on Military Base*, July 2012

Tuesday, October 30: SECOND MIDTERM IN CLASS

Nov 1-29: Assignments will be from Course Reader Vol III.

Part IV.  ESTABLISHING THE PARENT-CHILD RELATIONSHIP

Nov 1:

A. Determining Parentage: Overview
   Note: Establishing Paternity & Maternity

Nov 6-8:

B. Parental Rights: Scope and Limits

1. Grandparent & Third Party Visitation over Parental Objection:

2. Psychological and De Facto Parents:
   The Case of *Phillip B.* (California 1983)
Nov 13:

C. **Who Is A Legal Mother?**

Cartoons

Nov 15-19:

D. **Who Is A Legal Father?**

- *Adoption of Kelsey S.*, 1 Cal.4th 816 (1992) [Excerpts]

Note on “best interests” & “detriment” when an adoption fails
- [from *In re Bridget* (Cal 1996)]

Nov 27-29:

E. **Determining the “Suitability” Of Adoptive Parents: Two Examples**

1. Should race, color, or national origin be a factor in selecting adoptive parents?
   - Federal Multi-Ethnic Placement Act: Overview

2. Should sexual orientation be a factor in selecting adoptive parents?
   - *CWLA Amicus Brief* by Hollinger et al. in Florida GILL case challenging state ban on adoptions by gays and lesbians

Tuesday, December 11, FINAL EXAMINATION, 3:30-5:30 p.m.: