

Professor Joan Heifetz Hollinger

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 the consequences of State regulation for children and fetuses, including debates about the status of fetuses and “leftover” frozen embryos and the ongoing private and public controversies about the role of embryonic cells in stem cell research. We will also discuss the parentage of children born as a result of assisted reproductive technology (ART), the effects of adoption laws and policies on out-of-wedlock children, and the efforts by adopted and ART-children to acquire information about their biogenetic origins.

The required reading materials for the course are:

1. Course Reader, Volume One Available from Copy Central, 2560 Bancroft Way.
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, Thursday, March 4: 9:30–11:00 a.m.	Approx. 20 %
Second Midterm, Thursday, April 15: 9:30-11:00 a.m.	30 %
Final Exam, Wednesday, May 12: 11:30-2:00 p.m.	35 %
Section attendance and participation	15%

The exams will be 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 GSIs, Ross Astoria and Alexa Koenig will schedule their own office hours.

SYLLABUS

The following assignments are from Course Reader Vol. One:

Part I. Mandatory Sterilization: For Whom?

January 21-26:

A. Eugenics and Justifications for Sterilizing the “Feeble-minded”

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
Allen E. Garland Allen, *Science Misapplied*, 99 Tech. Rev. 22 (1996)
Molly Ladd-Taylor, *Eugenics, Sterilization, and Social Welfare* (1997)
Stanley M. Aronson, *The State's Right to Sterilize*, Providence Journal,
June 19, 2006
Dahleen Glanton, *Sterile Victime Stand Up, Decry Legacy of Eugenics*,
Chicago Tribune, Sept 6, 2006

B. Sterilization as Punishment for Habitual Criminals

Skinner v. Oklahoma, 316 U.S. 535 (1942)

January 28-February 2:

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

February 4:

D. Case Study: Ashley the Pillow Angel

Ashley's Parents, *Why We Had to Do It*, Times of London, Jan 2007
Sam Howe Verhovek, *Parents Defend Decision*, LA Times, Jan 3, 2007
Peter Singer, *A Convenient Truth*, NY Times op-ed, Jan 26, 2007
Nancy Gibbs, *Pillow Angel Ethics*, Time, Jan 22, 2007
Anne McDonald, *The Other Story from a Pillow Angel*, Seattle Post-

Intelligencer, June 17, 2007
Child's Hysterectomy Illegal, Seattle Times, May 2007
S. Matthew Liao et al., *The Ashley Treatment*, Hasting Ctr Rep, March, 2007

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

February 9:

A. Syphilis and the Tuskegee "Experiment"

Allen M. Brandt, *The Tuskegee Syphilis Study* (1978)
President Clinton's 1997 "apology": news stories & editorials
The Roots of the Informed Consent Process, Monitor (1999)

B. Disposing of "Illegitimate" Babies

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

February 11:

C. Criminalizing Sodomy

Note on *Bowers v. Hardwick*, 478 U.S. 186 (1986)
Lawrence v. Texas, 123 S.Ct. 2472 (2003)
Robert C. Post, *Fashioning The Legal Constitution: Culture, Courts, And Law*, 117 Harv L Rev 4 (2003), excerpts
Adam Liptak, *Kansas Law on Gay Sex by Teenagers Overturned*, NY Times, Oct 22, 2005

February 16:

D. Statutory Rape

Michael M. v. Superior Court of Sonoma Co., 450 U.S. 464 (1981)
Cal. Penal Code § 261.5: Gender Neutral since 1993
Judith Levine, *Statutory Rape and the Denial of Female Desire* (2002)
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

Part III. Regulating Adolescent Sexuality

February 18:

A. What is Wrong -- or Right -- about Adolescents having Sex and having Babies?

2008 Kids Count Data on Teen Birth Rate
2003 Kids Count Data on Teen Birth Rate
The Nation's Health Web on Comparative Teen Pregnancy Rates
Debate: Should public policy be directed toward preventing teenage pregnancy?
Professors Kristin Luker and Jane Mauldon spar with each other
Linda Hirshman, *Sarah Palin's teenage daughter's baby*, Slate, Sept 2, 2008
William Saletan, *Bristol's Body, Sarah's Choice*, Slate, Sept 5, 2008

February 18-23:

B. Constitutionally Protected Access for Minors to Contraception and Abortion?

Note on Reproductive Rights and Interests

Griswold v. Connecticut, 381 U.S. 479 (1965)

Roe v. Wade, 410 U.S. 113 (1973)

Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52 (1976)

Carey v. Population Services Internat'l, 431 U.S. 678 (1977)

Bellotti v. Baird, 443 U.S. 622 (1979)

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

Ayotte v. Atty General of New Hampshire, 126 S Ct 961 (2006)

Parental Involvement in Minors' Abortions, Guttmacher Institute, 2009

February 25- March 2:

C. Different Approaches to Regulating Adolescent Sexuality

Facts on Contraceptive Use and Access to Pre-Natal Care
, Guttmacher Institute, 2009

Facts on Sex Education in the United States, Guttmacher Institute, Jan 2008

Heather Boonstra, *Advocates Call for New Sex-Ed Approach as Era of
Abstinence Only Ends*, Guttmacher Policy Review, 2009

Child Trends 2003: *Percentage of Teens Having Sex Declines
Abstinence-only education being blamed for rise since 2005 in teen
Pregnancy*, Salon.com. Dec 7, 2007

Margaret Talbot on Teen Sex in Red and Blue States; Excerpt
*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

Sexual Abstinence: A Message Too Shocking for Current Miss America,
San Diego Union-Tribune, Nov 23, 2002

Stephanie Rosenbloom, *A Ring that Says No, Not Yet*, NY Times
Dec 8, 2005

Ceci Connolly, *Some Abstinence Programs Mislead Teens*, Wash Post,
Dec 2, 2004

Rob Stein, *Abstinence Programs Face Rejection*, Wash Post, Dec 16, 2007
Virginity Pledges Do Not Work, Yet Another Study Confirms, Dec 30, 2008

How Wider Use of A Pill Could Quiet Abortion Fights, USA Today,
Dec. 30, 2003
Katie Roiphe, *Where's the Magic?* Op-Ed, December 2003
Joshua Zeitz, *The Big Lie About the Little Pill*, NY Times,
Dec. 27, 2003
Darshak Sanghavi, *Prevention, Not Abortion*, Boston Globe,
Dec. 23, 2003
Betsy McKay, *Poverty: Winning the Battle on Teen Pregnancy*, Wall St.
Journal, July 22, 2006
Patrick Welsh, *They're Having Babies: Are We Helping?* Wash Post,
Dec 14, 2008

THURSDAY, MARCH 4: FIRST MIDTERM IN CLASS

Part IV. What Should be the State's Role When Women's Reproductive Rights Clash with the Interest in Protecting the "Products" of Procreative Activity?

March 9:

A. Abortion: The Contemporary Policy and Political Debates

Guttmacher Institute Abortion Fact Sheets
Abortions Hit Lowest Number Since 1976, Wash Post, Jan 17, 2008
Guttmacher Institute, Expert Statements, Jan 2008
New Report Documents 30-Year U.S. Abortion Trends, Sept 2008
Reva Siegal, *Reasoning from the Body: A Historical Perspective on
Abortion Regulation and Equal Protection*, Stanford L. Rev. (1992)
Eyal Press, *My Father's Abortion War*, NY Times Mag, Jan 22, 2006
William Baude, *States of Confusion*, NY Times op-ed, Jan 22, 2006
Jennifer Lee & Cary Buckley, *For Privacy's Sake, Risking Do-It-Yourself Abortion*,
NY Times, Jan 5, 2009
Barack Obama Statement on 35th Anniversary of *Roe v. Wade*
Melinda Henneberger, *Obama's Threat to Catholic Hospitals*, Slate, Nov 24, 2008
FOCA Bill as introduced in Congress 2007

B. Protecting the Fetus: Statutory and Judicial Developments

March 9-11:

1. What role for a prospective father in decisions about abortion?
Planned Parenthood of Southeastern Pa. v. Casey (U.S. 1992)
Dalton Conley, *A Man's Right to Choose*, NY Times op-ed, 2005

March 16:

2. Prohibiting "Partial-Birth" Abortion
Melissa C. Holsinger, *The Partial-Birth Abortion Ban Act of 2003*
NYU J. Leg. & Pub. Pol. (2003)
Robin Toner, *Senate Revisits Ban of Abortion Procedure*, NY Times,
March 11, 2003

Frank Talk About Abortion, NY Times, editorial, Nov. 30, 2003
Congress: P.L. 108-105. *The Partial-Birth Abortion Ban Act of 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,"* 2009

March 18:

3. Mandatory Counseling and (Mis)Informed Consent
Lawrence K. Altman, *Panel Finds No Connection Between Cancer and Abortion*, NY Times, March 7, 2003
James Glanz, *Scientists Say Administration Distorts Facts*, NY Times, Feb. 19, 2004 with EXCERPTS from UCS Report
State Policies: *Counseling and Waiting Periods for Abortion*, Jan 2009
State Policies: *Ultrasound Requirements*, Jan 2009
Abortion Counseling versus Informed Consent Principles, Nov 13, 2007
APA Task Force Finds Single Abortion Not A Threat To Women's Mental Health, August 2008
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

Spring Vacation: March 22-26

March 30:

4. Federal "Conscience" Regulations
State Policies: *Refusing to Provide Health Services*, 2009
A.Sonfield, *Delineating the Obligations That Come with Conscientious Refusal: A Question of Balance* (2009)
U.S. D.H.H.S. Regulation Proposed to Help Protect Health Care Providers From Discrimination, Aug 2008
Robert Pear, *Protests Over a Rule to Protect Health Providers*, NY Times, Nov 18, 2008
Bush Administration Publishes "Refusal Right" Rule, Dec 19, 2008
David Stout, *Medical "Conscience Rule" Is Issued*, NY Times, Dec 19, 2008
A Parting Shot at Women's Rights, NY Times editorial, Dec 26, 2008
Victory in California: Benitez Decision Aug 2008

April 1:

5. Can Pregnant Women be 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)

Ariela R. Dubler, *Monitoring Motherhood: Whitner v. State* (SC 1996),
106 Yale L. J. 935 (1996)
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”
Adam Nossiter, *In Alabama, A Crackdown on Pregnant Drug Users*,
NY Times, March 15, 2008

END OF VOLUME ONE

Topics in Volume Two:

Part V. From Coitus to Commerce: Separating Reproduction from Sexual Intercourse

[Assisted Reproduction, Parentage, Disposition of Sperm and Ova]

THURSDAY, APRIL 15: SECOND MIDTERM IN CLASS

Part VI. Stem Cell Research and Therapeutic Cloning

WEDNESDAY, MAY 12: FINAL EXAMINATION