

**Legal Studies 168
Spring 2012**

**Sex, Reproduction, and the Law
Tu – Th 9:30-11:00 a.m.**

Professor Joan Heifetz Hollinger

SYLLABUS

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:

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, 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.

Professor Joan Heifetz Hollinger

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

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

Kim Severson, *Thousands Sterilized, A State Weighs 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

The Roots of the Informed Consent Process, Monitor (1999)

Amy Goodman, *Lessons from the Guatemala Syphilis Experiment* (2010)

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

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

Feb 9:

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
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]
Riva Siegal, *Reasoning from the Body: A Historical Perspective on Abortion Regulation and Equal Protection*, Stanford L. Rev. (1992)[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]
Dalton Conley, *A Man’s Right to Choose*, NY Times op-ed, 2005

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

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,”* 2012

Feb 28:

3. Contemporary Abortion Data

Who Has Abortions? (Guttmacher 2011)

Susan Cohen, *Abortion and Women of Color: The Bigger Picture* (2008)

Rachel B. Gold, *Insurance Coverage & Abortion: Information & Misinformation* (2010)

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:

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)

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

Margaret Talbot on Teen Sex in Red and Blue States [Excerpt]
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

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

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

How Wider Use of A Pill Could Quiet Abortion Fights, USA Today,
Dec. 30, 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

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)
- 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
- 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, *The Proposed Embryonic Personhood Amendment Appears to Outlaw Birth Control*, slate.com, Nov 7, 2011

D.Grady, *Medical Nuances Drove 'No' Vote in Mississippi*, NY Times, Nov 14, 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.