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, Thursday, February 28: 9:30-11:00 a.m. Approx. 20 %
Second Midterm, Thursday, April 4: 9:30-11:00 a.m. 30 %
Final Exam, Wednesday, May 15: 11:30-2:00 p.m. 30 %
Section attendance and participation 20 %

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 Tuesday 3:00-5:00 p.m. in Boalt Hall Room 465, or by appointment, 642-1419; Jhollinger@law.berkeley.edu. Our GSI, Casey Hultin, will schedule her own office hours.
ASSIGNMENTS FROM COURSE READER, VOLUME ONE:

Part I. Mandatory Sterilization: For Whom?

Jan 22-29:

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
   
   
   
   
   
   *North Carolina budget drops payment to sterilization victims*, Jan 2013
   

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

Jan 29-31:

C. Sterilization to “Protect” Developmentally Disabled Adults and Children
   
   
   *Conservatorship of Valerie N.*, 40 Cal.3d 143 (1985)
   
   *Conservatorship of Angela D.*, 70 Cal. App.4th (1999)
   
   *Proposed Guidelines for Involuntary Sterilization*
   
   *New Illinois Law on Involuntary Sterilization*, 2009

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

Feb 5:

A. Syphilis and the Tuskegee “Experiment”
   
   Allen M. Brandt, *The Tuskegee Syphilis Study* (1978)
   
   President Clinton’s 1997 “apology”: news stories & editorials
   
   
Feb 7:

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

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

Feb 12:

**C. Criminalizing Sodomy**

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

Feb 14:

**D. Statutory Rape**

Cal. Penal Code § 261.5: Gender Neutral since 1993
San Mateo County DA Office website on Statutory Rape

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

Feb 19:

**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 26:

2. Contemporary Abortion and Contraception Data:
*Who Has Abortions?* (Guttmacher 2011)
*Trends in Characteristics of Women Obtaining Abortions, 1974-2004*
*Disparities in Unintended Pregnancy Grow: Dramatic Increases Among Poor Women* (2011)

**Thursday, February 28: First Midterm Exam in Class**

**March 5:**

3. Does Prohibiting “Partial-Birth” Abortion Unduly Burden a Woman’s Right to Choose?
   - 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.”* 2013

**March 7-12:**

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

- Note on Judicial Bypass Procedures
- *Ex Parte Anonymous*, a Minor, 803 So.2d 542 (Ala. 2002)
- 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*, 2013

**Part IV. Regulating Adolescent Sex and Sexuality**

**Mar 14:**

A. *Adolescents Having Sex and/or Babies*
2008 Kids Count Data on Teen Birth Rate
Sharp Decline in Teen Births between 1990 and 2005; followed by sudden increase in 2006 in teen pregnancy, birth and abortion rates
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
Minors’ Rights as Parents, 2013

Mar 19-21:

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
Youth Have Healthier Sexual Outcomes if Their Sex Education Classes Discuss Contraception
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

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
March 25-29: Spring Vacation

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

April 2:

A. **Mandatory Counseling and (Mis)Informed Consent**

States Enact Record Number of Abortion Restrictions in 2011-12 (Overview)
Counseling and Waiting Periods for Abortion: Fact Sheet
*Abortion Counseling versus Informed Consent Principles*, Nov 13, 2007
*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
Carol Sanger, *Mandatory Ultrasound and the Path to a Protected Choice*, Abstract 2008

Thursday, April 4: Second Midterm in Class

April 9:

B. **Holding Pregnant Women Liable for Fetal Neglect or Abuse**

*State ex rel. Angela M.W. v. Kruzicki*, 561 NW2d 719 (Wis. 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)

Volume Two of the Course Reader will be available at the end of March along with specific reading assignments for each week until the end of the semester.

**Part VI. From Coitus to Commerce: Assisted Reproduction and the Marketing of Solutions to Infertility (April 11-May 2)**

**FINAL EXAMINATION: WEDNESDAY MAY 15, 11:30-2:00 P.M.**