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:

2. Course Reader: Volume Two Available in late 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, Monday, February 24: 4:10–5:30 p.m. Approx. 20 %
Second Midterm, Thursday, April 2: 4:10-5:30 p.m. 30 %
Final Exam, Friday, May 16: 8:30-11:00 a.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, Lindsay Parham, will schedule her own office hours.
Reading Assignments from Reader I

Part I. Mandatory Sterilization: For Whom?

Jan 22-27:
  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

Jan 29:
  B. Sterilization as Punishment for Habitual Criminals
     *Skinner v. Oklahoma*, 316 U.S. 535 (1942)

Feb 3-5:
  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 10:
  A. Syphilis and the Tuskegee “Experiment”
     Allen M. Brandt, *The Tuskegee Syphilis Study* (1978)
     President Clinton’s 1997 “apology”: news stories & editorials

Feb 12:
  B. Criminalizing Sodomy
Feb 17: President’s Day [No Class]

Feb 19:

C. **Statutory Rape**
   
   
   Cal. Penal Code § 261.5: Gender Neutral since 1993
   
   
   San Mateo County DA Office website on Statutory Rape
   
   *Same-Sex statutory rape?* Volokh.com May 20, 2013

Monday February 24: First Midterm in Class

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

Feb 26:

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]
   

March 3:

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

March 5:

2. Does Prohibiting “Partial-Birth” Abortion “Unduly Burden” a Woman’s Right to Terminate her Pregnancy?
   
   
   
   *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,”* 2013

**March 10:**

**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

**March 12:**

**E. Recent Data on Contraception and Abortion in U.S.:**

*Contraceptive Use in the United States* (2013)
*Unintended Pregnancy in the U.S.* (2013)
*Unintended Pregnancies in California Facts on Induced Abortions* (Guttmacher 2013)


*Who Has Second-Trimester or other Late Abortions* (2012)

Sharp Decline in Teen Births between 1990 and 2005; followed by sudden increase in 2006 in teen pregnancy, birth and abortion rates

*Overview of Minors’ Rights to Make Sexual & Reproductive Health Decisions* Hollinger & Guttmacher (2012),

Margaret Talbot on Teen Sex in Red and Blue States [Excerpt]
*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
Part IV. Women’s Rights versus Fetal Rights: Ongoing Constitutional & Socio-Political Controversy

March 17:
A. Mandatory Counseling and (Mis)Informed Consent

States Enact Record Number of Abortion Restrictions in 2011-13 (Overview)
California Expands Availability of Abortions, NY Times, Oct. 2013
Counseling and Waiting Periods for Abortion: Fact Sheet 2013
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
Amanda Hess, What Happens to Women Who Are Denied Abortions? Slate.com
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
Pam Belluck, Pregnancy Centers Gain Influence in Anti-Abortion Arena, NY Times, Jan 4, 2013
Katy Waldman, Does Looking at Ultrasound Change Women’s Minds? Slate.com Jan. 9, 2014

March 19:
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.
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)
March 24-28 Spring Vacation

March 31: Discussion of U.S. Supreme Court oral arguments on cases challenging federal Health Care Act’s provisions mandating insurance coverage for contraceptives and reproductive health services. [case summaries and transcripts of oral arguments will be posted on b-space]

April 2: Second Midterm in Class

April 7-30: Reader II will be available by March 31

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

Specific reading assignments for Part V. will be distributed by March 31

FRIDAY, MAY 16: FINAL EXAMINATION 8:30-11:00 A.M.