

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, 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](mailto:Jhollinger@law.berkeley.edu). Our GSI, Casey Hultin, will schedule her own office hours.

Professor Joan Heifetz Hollinger

**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

Allen E. Garland Allen, *Science Misapplied*, 99 Tech. Rev. 22 (1996)

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 Weights Restitution*, NY Times,  
Dec 9, 2011

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

E.Cohen & J.Bonifield, *California's Dark Legacy of Forced Sterilizations*,  
March 2012

**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**

*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)

*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

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

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

**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**

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 14:**

**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

**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]  
Reva 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 26:**

2. Contemporary Abortion and Contraception Data:  
*Who Has Abortions?* (Guttmacher 2011)  
*Trends in Characteristics of Women Obtaining Abortions, 1974-2004*

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)  
*Facts About Unintended Pregnancy: California  
Contraeptive Use in the United States* (2012)

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

#### **March 5:**

3. 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,”* 2013

#### **March 7-12:**

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

*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*, 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

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  
*Emergency Contraception Fact Sheet* 2013

**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  
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

**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)  
*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)

**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.**