

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 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
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 Victims Stand Up, Decry Legacy of Eugenics*,
Chicago Tribune, Sept 6, 2006
North Carolina budget drops payment to sterilization victims, Jan 2013
E.Cohen & J.Bonifield, *California's Dark Legacy of Forced Sterilizations*,
March 2012

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**
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 10:

- 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 12:

- B. **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*, 2005

Feb 17: President's Day [No Class]

Feb 19:

C. 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

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]

Reva Siegal, *Reasoning from the Body: A Historical Perspective on Abortion Regulation and Equal Protection*, Stanford L. Rev. (1992)[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 Preganancy?

U.S.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 10:

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

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)
Rachel B. Gold, *Insurance Coverage & Abortion: Information & Misinformation*
(2010)
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
E,Eckholm, *Women Losing Access to Abortion*, NY Times, Jan. 2, 2014
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)
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.*
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)
The "New Jane Crow": A Report on Paltrow Study, huffingtonpost.com Jan. 15, 2013

