

**Regulating the American Family:  
Family Law and Social Policy  
Monday, 1:00-4:00 pm  
WWS 594 d  
Robertson 010**

**Elisabeth Donahue, Instructor**  
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**Office Hours: Monday, 11-1 pm or 4-5 pm**

**Reading Materials Required:**

The Future of Children: Marriage and Child Wellbeing, Sara McLanahan, Elisabeth Donahue and Ron Haskins, eds. (2005) (handout)

Family Law in Perspective, Walter Wadlington and Raymond C. O'Brien, eds. (2001) (U-Store)

Abortion and the Politics of Motherhood, Kristin Luker (1984) (U-Store)

E-Reserves, Stokes Library (<http://lib-terminal.princeton.edu/ereserves/logon.asp>; User ID: wws594d Password: stokes)

The Future of Child Protection, Jane Waldfogel (on reserve, Stokes Library)

(All case excerpts taken from Judith Areen, Family Law Cases and Materials, 4<sup>th</sup> Edition, Foundation Press, 1999)

**Description of Class:**

When we think of families, we think of small, private groups. We imagine that the right to marry, have and raise children and dissolve a marital union are private decisions, outside the realm of the government. And yet the American family is a highly regulated body. The government is hardly neutral when it comes to forming policy that impacts how families are formed, how their finances are treated, and how they are dealt with if the family unit breaks apart. In this course we will examine marriage and family dissolution rules; the impact on children of different family structures; and the family privacy doctrine as it applies to child welfare and procreation. We will debate the role of government regarding families: should state intervention be limited to when families fail to function or dissolve, or should there be a more proactive role of government? In examining this debate, we will look at the impact on different parties – women, men, children, and the state.

**Description of Weekly Assignments, Final Paper and Oral Report:**

1. Weekly Assignments: Each week, legal cases or policy papers will be assigned that represent a debate within a particular area of family policy. Students are expected to write a short paper (1-2 pages) on one of these, supporting one side of the policy being debated in the case.

2. Final Paper: Students will choose a targeted issue that affects family policy. Each 15-page paper will take the form of a memo and will address the following issues: 1) the trends of the particular topic; 2) the government rationale for regulation of that topic; 3) the laws that govern; and 4) proposed policy to address deficiencies in the current law.
3. Oral Report: During the last class meeting, students will give a short presentation of their topic.

**Grades:** The overall grade for each student will be weighted as follows:

25% Weekly Assignments and class participation  
60% Paper  
15% Oral Report

## **SYLLABUS**

### **1. Monday, March 27, 2006**

Introduction: What is the rationale for government involvement in families?

Overview of Trends in Family Formation

Video: Let's Get Married, Frontline

Reading:

- Sara McLanahan, "Diverging Destinies: How Children are Faring under the 2<sup>nd</sup> Demographic Transition," *Demography*, Volume 41-Number 4, pages 607-627, November 2004 (e-reserves)

### **2. Monday, April 3, 2006**

Regulating Marriage and Divorce, Part I: Marriage Rules, Grounds for Divorce, Property Law, Child Support

Reading:

Trends:

- Andrew Cherlin, "American Marriage in the 21<sup>st</sup> Century," *The Future of Children: Marriage and Child Wellbeing*, Fall 2005

Government Rationale for Regulation:

- Linda Waite, "Does Marriage Matter?" *Demography*, Volume 32-Number 4, pages 483-507, November 1995 (e-reserves)

- George Ackerlock, “Men without Children” (e-reserves)
- Paul Amato, “The Impact of Family Formation Change on the Cognitive, Social and Emotional Well-Being of the Next Generation,” *The Future of Children: Marriage and Child Wellbeing*
- Sara McLanahan, "The Two Faces of Divorce: Women's and Children's Interests," pages 193-207 in *Macro-Micro Linkages in Sociology*, J. Huber (Ed.) (e-reserves)
- Karen C. Holden and Pamela J. Smock, "The Economic Costs of Marital Dissolution, Why Do Women Bear a Disproportionate Cost?" *Annual Review of Sociology*, Vol. 17, 1991. pp. 51-78 (e-reserves)
- Jonathon Rauch, “Gay Marriage, Same-Sex Parenting and America’s Children,” *The Future of Children: Marriage and Child Wellbeing*

Law that Governs:

Family Law in Perspective, Chapters 3, 5, 6

Cases:

- Goodridge v. Department of Public Health (SJC, Massachusetts), November 18, 2003 (e-reserves)
- Terry Martin Hekker, “Modern Love: Paradise Lost,” New York Times, Sec. 9, Page 9, January 1, 2006 (e-reserves)

### 3. **Monday, April 10, 2006**

Regulating Marriage, Part II: Cohabitation, Non-marital childbearing, and Fragile Families

Guest Lecturer: Sara McLanahan, Professor of Sociology, Princeton

Reading:

Trends:

- Andrew Cherlin, “American Marriage in the 21<sup>st</sup> Century,” *The Future of Children: Marriage and Child Wellbeing*, Fall 2005 (review)
- Sara McLanahan, “Diverging Destinies: How Children are Faring under the 2<sup>nd</sup> Demographic Transition,” *Demography*, Volume 41-Number 4, pages 607-627, November 2004 (review)

Government Rationale for Regulation:

- Sara McLanahan, “Fragile Families and the Marriage Agenda,” Working Paper from the Center for Research on Child Wellbeing (CRCW) (e-reserves)
- Anne Barlow, Rebecca Probert, Regulating Marriage and Cohabitation: “Changing Family Values and Policies in Europe and North America—An Introductory Critique,” *Law and Policy*, Volume 26, Number 1, 2004 (e-reserves)

- Pamela Smock, Wendy Manning, “Living Together Unmarried in the United States: Demographic Perspectives and Implications for Family Policy” *Law and Policy*, Volume 26, Number 1, 2004 (e-reserves)
- Cynthia Grant Bowman, “Legal Treatment of Cohabitation in the United States,” *Law and Policy*, Volume 26, Number 1, 2004 (e-reserves)

Law that Governs:

- Family Law in Perspective, Chapters 7, Sections II and III; Chapter 8, Section III

Cases:

- *Lehr v. Robertson*, 463 U.S. 248 (1983) (e-reserves)
- *Future of Children* Policy Brief: The Decline in Marriage, What to Do? (handout)

#### **4. Monday, April 17, 2006**

Family Privacy vs. the State, Part I: Child Welfare: Custody, and Abuse and Neglect

Guest Lecturer: Marla Isaacs, Family Psychologist and Court Expert Witness in Custody and Parental Termination Cases

Reading:

Trends:

- Jane Waldfogel, The Future of Child Protection : How to Break the Cycle of Abuse and Neglect, Chapters 1, 2, 3 (pages 1-93) (Stokes Library reserve)

Government Rationale for Regulation:

- Susan Steinman, “Joint Custody: What we Know, What we Have Yet to Learn, and the Judicial and Legislative Implications,” 16 U.C. Davis L.Rev. 739 (1983) (e-reserves)
- Jana Singer and Reynolds, “A Dissent of Joint Custody,” 47 Md.L.Rev. 497 (1988) (e-reserves)
- Judith Areen, “Intervention Between Parent and Child: A Reappraisal of the State’s Role in Child Neglect and Abuse Cases,” 63 Geo. L.J. 887 (1975) (e-reserves)

Laws that Govern:

- Family Law in Perspectives, Chapter 8, Sections I and II; Chapters 9, 10

Cases:

- *Thronson v. Thronson*, Court of Appeals of Utah (1991), 810 P2d. 428 (e-reserves)

- Child neglect – parental termination case (PA case in which Marla Isaacs testified) (handout)

5. **Monday, April 24, 2006**

Family Privacy vs. the State, Part II: Regulating Fertility and Childbearing

Reading:

Trends: See Source Book, Introduction (below)

Government Rationale for Regulation:

- Source Book in Bioethics: A Documentary History, Albert R. Jonsen, Robert M. Veatch, LeRoy Walters, Eds.: Part IV, pages 337-406, “Ethical Issues Arising from Human Reproductive Technologies and Arrangements” (e-reserves)
- Kristin Luker, Abortion and the Politics of Motherhood (skip appendices)
- Supreme Court Cases: *Griswold v. Connecticut*, 381 U.S. 479 (1965); *Roe v. Wade*, 410 U.S. 113 (1973); *Planned Parenthood of Southeastern PA v. Casey*, 505 U.S. 833 (e-reserves)

Laws that Govern:

- Family Law in Perspectives, Chapter 7, Sections I, IV, V, VI

Cases:

- *In re Baby M.*, Supreme Court of New Jersey, 1988 109 N.J. 396, 537 A2d. 1227 and “Torn Between Two Moms: Baby M 8 Years Later,” *Redbook*, January 1994, page 60 (e-reserves – in Source Book)
- *Whitner v. South Carolina*, Supreme Court of South Carolina, 1997 328 S.C. 1, 492 S.E.2d 777 (e-reserves)
- *Roe v. Wade*, 410 U.S. 113 (1973) (e-reserves)

6. **Monday, May 1, 2006**

Class presentations