

**CHILD, FAMILY & STATE**  
**Fall 2009**  
**Professor Elizabeth Bartholet**  
**Course Information and Syllabus**

**COURSE INFORMATION**

**Course Materials**

Text is Abrams & Ramsey, CHILDREN AND THE LAW, 3rd edition (2007).  
Supplemental text is Bartholet, NOBODY'S CHILDREN (1999).  
Multilithed materials will be available at Distribution mid-August.

**Administrative Details**

*Contact Information for  
Professor Elizabeth Bartholet:*

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to make sure I'm available.)

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Faculty Assistant to Elizabeth Bartholet:*

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Schedule: M-F, 8:30am – 4:30pm

*Course Website*

To access the course website, log on to iCommons (<http://myhls.law.harvard.edu>), go to the My Courses box and click on Child, Family & State. Cross-registered students should bring their signed add/drop form AND a picture ID or school ID# to the Student Helpdesk in Hauser 020 and the ITS staff will set up an iCommons account for you. Either Professor Bartholet or her assistant Eleanor Topping can sign forms. Auditors (both HLS and non-HLS students) should bring a note (e-mail will suffice) from Bartholet or Topping with permission to audit AND a picture ID or school ID # to the Student Helpdesk in Hauser 020.

**Course Requirements**

There will be a take-home examination on a scheduled day.

Grades will be based primarily on the exam, but may be adjusted up on the basis of class performance if the class enrollment is 50 or less, and if assigned written or oral exercises are given may be adjusted up or down based on such exercises.

# SYLLABUS

**Class meets Tuesdays and Wednesdays, 10:30 – 12:00**

Pages refer to *Abrams & Ramsey*, except where marked NC in which case they refer to *Nobody's Children*, and where marked M in which case they refer to Multilithed materials. The cases noted in Syllabus below are ones you should read with special care for class discussion – typically these are major Supreme Court cases.

## WEEK I (Days 1, 2)

**Sept 8**

**THE STATUS, RIGHTS & OBLIGATIONS OF CHILDREN** 1

**Intro & Background** 1-13

**The Law's Evolving Conception:** 13-25  
*Meyer, Pierce*

**Sept 9**

*Prince, Brown v. Board, In re Gault, Tinker, Earls* 25-59

## Fly-Out Week Sept. 14-18

## WEEK II (Days 3,4)

**Sept 22**

*Morse v. Frederick*, 127 S.Ct. 2618 (2007) M 1-9  
*Safford v. Redding*, 557 U.S. – (2009) M 10-19  
*Troxel* 59-72

**Sept 23**

*Yoder, Bellotti* 72-86

*Gonzales v. Carhart*, 127 S.Ct. 1610 (2007) M 20-32

## WEEK III (Days 5,6)

**Sept 29**

UN Convention on the Rights of the Child 97-108

<b>Perspectives on Children’s Rights</b>	108-21
Bartholet, <i>International Adoption: The Child’s Story</i> , 24 Ga. St. U.L. Rev. 333 (2008), §IA	M 33-34

**DEFINING THE CHILD – PARENT RELATIONSHIP**

<b>Traditional Concepts:</b>	122-48
<i>Michael H.</i>	

**Sept 30**

<b>Challenges to the Tradition:</b>	
Bartholet, <i>Beyond Biology</i> , 2 Duke Gender, Law & Policy 5 (1995) at 5-14	M 35-42
<i>In re C.K.G.</i>	148-56
<i>Alison D</i> , ALI Principles, <i>In re A.R.A.</i>	156-79

**WEEK IV (Days 7,8)**

**Oct 6**

Kolata, “Picture Emerging on Genetic Risks of IVF,” NYT, 2/1/7/09	M 43-45
Canadian Court rules child has 3 parents, NYT, 1/12/07	M 46-47
Marquardt, “When 3 Really is a Crowd,” NYT, 7/16/07	M 48-50
“Buying Babies, Bit by Bit,” The Economist, 12/19/06	M 51-53
Sanghavi, “Wanting Babies Like Themselves, Some Parents Choose Genetic Defects,” NYT, 12/11/06	M 54-57
Ramaswamy, “The Chimera Question,” The Boston Globe, 7/16/07	M 58-59
Wade, “Scientists in Germany Draft Neanderthal Genome	M 60-61

Parens & Knowles, <i>Public Policy, Regulation and Reprogenetics</i> (The Hastings Center Report, Garrison, NY, July-August 2003)	M 62-70
<b>Oct 7</b>	
<b>Guardianship:</b> <i>Phillip B.</i> (on related medical neglect issues, see later, Week VI)	179-93
<b>REPRESENTING CHILDREN</b>	
<b>Introduction</b>	200-06
<b>The Child's Right to Sue:</b> <i>Kingsley</i>	230-34
<b>The Role of the Child's Counsel</b>	234-47
<b>ABA Section of Litigation, Proposed Model Act governing Representation of Children</b>	M 71-78
<b>WEEK V (Days 9, 10)</b>	
<b>Oct 13</b>	
<b>ABUSE &amp; NEGLECT</b>	
<b>Introduction</b>	283-88 NC1-8, 22-29
Guggenheim, <i>Somebody's Children</i> , Book Review of Bartholet's NOBODY'S CHILDREN, 113 Harv. L. Rev 1716, 1716-17, 1735-50 (2000)	M 79-87
<b>Discovering Abuse &amp; Neglect: Reporting Systems:</b> <i>Valmonte v. Bane</i>	288-301 NC 59-67
<b>Oct 14</b>	
<b>The Child Protection System</b>	301-304
<b>Limits on Intervention:</b> <i>In re Juvenile Appeal</i>	304-15
<b>Patterns of Abuse &amp; Neglect:</b> <b>Neglect, Psychological Maltreatment, Abuse:</b> <i>In re S.T.</i>	315-37 NC 98-110

## WEEK VI (Days 11,12)

Oct 20

### Patterns of Abuse & Neglect, cont'd:

**Corporal Punishment:** *In re T.A.* 337-47

**Sexual Abuse:** *In re: T.G* 347-57

**Medical Neglect** 774-78

*Review: Phillip B., Week IV*

*Baby Doe CAPTA Amendments*

**Impact on Children** NC 95-97

Oct 21

**Parental Substance Abuse:** *In re Dante*, Problem 4-8 357-63  
NC 67-81, 207-32

*Dwyer, The Child Protection Pretense: States' Continued Consignment of Newborn Babies To Unfit Parents* M 88-103

*Dwyer, A Constitutional Birthright: The State, Parentage, and the Rights of Newborn Persons* M 104

*Dillard, Child Welfare and Future Persons* M 105-111

## WEEK VII (Days 13,14)

Oct 27

**State Duty to Intervene/Child Right to Protection:** 363-74  
*DeShaney*

**Reasonable Efforts Requirement, Termination of Parental Rights:** *In re N.M.W., Santosky, Lassiter* 375-396

Oct 28

*Ashley, Jeffrey, Adoption of B.O.* 396-413  
NC 176-204  
NC 33-43

**WEEK VIII (Days 15,16)**

**Nov 3**

**FOSTER CARE**

**Introduction** 432-45

**The Child's Right to a Family:**  
*Smith v. OFFER* 445-461

**Nov 4**

*Ashley, Procopio* 461-71

**Types of Placements** 490-518  
NC 81-95

**WEEK IX (Days 17,18)**

**MONDAY NOV 9 INSTEAD OF NORMAL TUESDAY NOV 10**

**More on Foster Care & New Permanency Movement** NC 142-46  
154-59

**ADOPTION** 619

**Introduction** 619-21

**Rights/Privileges to Adopt and Be Adopted** 621-37

**Nov 11**

Bartholet, *FAMILY BONDS: Adoption & the Parental Screening System*, 62-85 M 112-119

Adoption Intermediaries & Their Regulation 637-43

*Lofton v. D.C.F.S.*, 358 F.3<sup>rd</sup> 804 (11<sup>th</sup> Cir. 2004) M 120-129

Anderson, "Miami judge rules against Florida gay adoption Ban," *The Associated Press*, 11/25/08 M 130-131

*In re John Doe and James Doe*, Florida Circuit Court, Juvenile Division, 11/25/08 M 132-154

## WEEK X (Days 19,20)

Nov17

### The No-\$-for-Babies Rule

644-55

Sandel, *The Baby Bazaar*, *The New Republic*, 10/20/97

M 155-157

### The Consent Requirement: *Stanley*

655-64

*Lehr, In re Doe*

664-86

NCFA Newsletter, On the Benefits of a National Putative Father Registry

M 158-159

Nov 18

### Openness & Roots Issues:

*Vito*

686-93

Bartholet, FAMILY BONDS

*Adoption & the Sealed Record System*, at 53-61

M 160-163

*Adoption & Stigma: The Studies*, at 174-83

M 164-168

Daly, M and Wilson, M., *Preface: Special Issue, Stepparental Investment*, 20 *Evolution and Human Behavior* 365-366 (1999)

M 169-170

Bartholet, *Guiding Principles for Picking Parents*, 27 *Harv. Women's L. J.* 323, 325-32

M 171-175

## WEEK XI (Days 21,22)

Nov 24

### Transracial Adoption

693-96

Dokoupil, *Raising Katie: What adopting a white girl taught a black family about race in the Obama era*, *Newsweek Web*, 4/27/09

M 176-178

Perry, *The Transracial Adoption Controversy*, 21 *NYU Rev of Law & Soc Change* 33 (1993-94), 34-37, 39, 53-76

M179-188

Bartholet, *NOBODY'S CHILDREN: Transracial Adoption & The Multiethnic Placement Act (MEPA)* NC 123-40

Bartholet, *Commentary: Cultural Stereotypes Can and Do Die: It's Time to Move on With Transracial Adoption*, 34 J Am Acad Psychiatry Law 315 (2006) M 189-192

HHS (OCR) Letter of Findings, Docket No. 05997026, HHS Dept. of Appeals Board No. 2023 (March 31, 2006) (Hamilton County, Ohio) M 193-215

## **Nov 25**

### **Native American Adoption**

The Indian Child Welfare Act (ICWA) 696, 420-23

### **International Adoption**

697-99

Graff, *The Lie We Love*, Foreign Policy, 59-66 (Nov/Dec. 2008) M 216-224

Smolin, *Intercountry Adoption as Child Trafficking*, 39 Valparaiso University Law Review 281 (2004) M 225-231

Bartholet, *International Adoption: The Child's Story*, 24 Ga. St. U. L. Rev. 333 (2008), § IB, III, IV M 232-261

## **WEEK XII (Days 23, 24)**

### **Dec 1**

GUEST LECTURER: The Hon. Jay D. Blitzman, Juvenile Court, Middlesex County, MA.

### **DELINQUENCY**

**Introduction** 996-1012

**Transfer: The "Adultification" of Juvenile Crime** 1021-24, 1033-39

**Death Penalty & Life Without Parole (LWOP)** 1159-60

**Future Directions for the Juvenile Justice System** 1166-77

**Dec 2**

**Class, Race, & Historic Injustice: Directions for the Future**

414-20  
NC 44-55

Bartholet, *The Racial Disproportionality Movement in Child Welfare: False Facts and Dangerous Directions*, 51 Ariz. L. Rev. \_\_\_\_ Intro, IIIA, IIIB (forthcoming Winter 2009),

M 262-277

**Family Support Programs: Community Partnerships, Intensive Early Home Visitation**

NC 141-42, 146-54,  
163-68