FUTURE OF THE FAMILY:
ADOPTION, REPRODUCTION, AND CHILD MALTREATMENT

Professor Elizabeth Bartholet

Fall-Spring 2004-05

Course Information, Syllabus and Schedule for Fall Classes
COURSE INFORMATION

Course Requirements include: regular attendance, active participation in discussion, and a research paper. Students are encouraged to write a substantial paper for one additional credit; this can be used to satisfy the School’s Written Work Requirement.

The seminar will meet for 1 ½ hour sessions throughout the Fall and Spring terms. Research paper topic descriptions will be due at the end of Fall term, following a required meeting with the professor to discuss topic. As indicated in the Syllabus, classes during the Fall and the first two weeks of the Spring term will focus on the assigned course readings as well as four films. Students will be assigned in pairs to help lead discussion during these classes. The remaining Spring term classes will consist of student presentations on their research and writing projects, and related discussions.

Grading: Grades will be based on fall and spring class participation (roughly one-third), and research paper and related presentation (roughly two-thirds).

Administrative Details:

Office: Hauser Hall 422  
Telephone: (617) 495-3128  
E-mail: ebarthol@law.harvard.edu  
Office Hours: Fridays: 3:00 pm - 5:00 pm  
Assistant: Erica George, Hauser Hall 418, (617) 496-0551, E-mail: egeorge@law.harvard.edu

Due Dates related to Research Papers:

Dec. 22: Brief Written Description of Paper Topic and/or Outlines, following individual meetings with Professor to discuss proposed topic, with meetings to be arranged during term office hours, or during December 10-17 period.

Mar. 25: Draft

Final papers will be due by deadlines set in HLS Catalog for work in connection with year-long course/seminar.

2Ls can get extensions to complete during 3L year so long as they document substantial work on paper done by end of spring term 05 (e.g. draft outline, partial draft, or report on research).

Length of Papers: Regular credit papers should be in 20-25 page range; extra-credit papers in 50 page range.
Check the course website for updates:

To access the course website, log on to Blackboard and go to My Courses in the upper right-hand corner of the screen and click on Future of the Family. Check Announcements for updated information.

Note: Cross-registered students need to bring their signed add/drop form, a picture ID and a social security number or school ID# to the Student Services Administrator in Hauser 025 to have a Blackboard account set up. Auditors need to bring a note (e-mail will suffice) from the faculty member or the faculty assistant describing the need for access to the Blackboard site to the Student Services Administrator in Hauser 025. Non-HLS auditors need to also bring a picture ID and a social security number or school ID#.

Note Re Email Communication: Feel free to email me to schedule meetings, send proposals, submit draft and final papers (no need for hard copy of same).

Student Presentations Spring Term Feb. 17 – April 28, 2005

A schedule of student presentations with dates related presentation packets are due will be posted on the course website by the end of January term. Readings for these classes will consist solely of student class presentation packets.

Packets should be 10-15 pages long, including a cover memo of 1-2 pages indicating what issues you want us to focus on for purposes of discussion. The rest of the packet can consist of an excerpt from your draft paper, and/or excerpts from relevant readings. Feel free to call or email me, or meet with me, to discuss any questions related to putting the packet together and/or presenting to the class. Each of you should plan on presenting for 15 minutes, leaving 20-25 minutes for discussion.

Packets will be due at my assistant’s desk by 3:00 p.m. the Friday prior to presentation. We will copy them and have them ready for other students to pick up by 12:00 noon the Tuesday prior to presentation. Alternatively you can email packet to my assistant by the Friday 3:00 p.m. deadline.
Course Materials:

(2) Multilithed Supplemental Materials referred to below as Supp.
(3) Optional readings referred to in the Syllabus will be on reserve in the HLS Library or are available at http://www.law.harvard.edu/faculty/bartholet.

Note: The Issues and Topics sections are designed to give you ideas for purposes of class discussion and also for paper topics.

Week 1 -- September 9: Introductory Meeting 4:30 pm – 6:30 pm or end of film

The only reading for this week is this Course Information, Syllabus & Schedule document. ALL should attend this first class, INCLUDING THOSE ON WAIT LIST WHO WANT TO BE ADMITTED. I'll describe the nature of the seminar, answer questions, and show a documentary called "Love & Diane.”

Week 2 – Sept. 16 (4:30pm-6:00pm)

Child Abuse and Neglect: Family Preservation Pros and Cons

Families by Law: III Foster Care

Text 91-93


Supp. 1-6

Questioning the Tradition: Bartholet, NOBODY’S CHILDREN: Abuse and Neglect, Foster Drift, and the Adoption Alternative (Beacon Press 1999) [hereafter Nobody’s Children]:

--Introduction, pp. 1-8, 22-29
--The Inherited Tradition, pp. 33-43
--The Politics, pp. 44-55
--Underintervention v. Overintervention, pp. 98-110

Supp. 7-15
Supp. 16-21
Supp. 22-27
Supp. 28-34

Defending the Tradition: Guggenheim, “Somebody’s Children:

Optional Reading:

Nobody’s Children, pp. 8-22, 59-97, 113-123

Supp. 50-83

Available at: http://www.law.harvard.edu/faculty/bartholet
Issues and Topics: Too much or too little family preservation? What does the research show as to success/failure, as to under/overintervention? How have feminists dealt with CAN (child abuse and neglect) issues and how should they? How do the politics in these areas work? What should be the direction for policy: more family preservation and related “community preservation” efforts, more state intervention, or....? How do the class and other issues raised in Love & Diane affect your thinking on these issues, and how do the readings affect your thinking on the film?

Week 3 – Sept. 23 (4:30pm-6:00pm)

Child Abuse and Neglect: New Initiatives

Garrison: “Parents’ Rights vs. Children’s Interests: The Case of the Foster Child” Text 108-110

Berrick: “When Children Cannot Remain Home: Foster Family Care and Kinship Care” Text 111-114

Nobody’s Children:
“New” Programs Promote Traditional Ideas, pp. 141-42 Supp. 84
--Family Group Decision Making, pp. 142-46 Supp. 85-87
--Community Partnerships, pp. 146-54 Supp. 88-92
--The New Permanency Movement, pp. 154-59 Supp. 93-95
Intervening Early with Home Visitation, pp. 163-75 Supp. 96-102
Taking Adoption Seriously, pp. 176-204 Supp. 103-17


Optional Reading:
Nobody’s Children, pp. 233-43 Supp. 150-55

Issues and Topics: What does the evidence look like to date on some of the new family preservation oriented reform moves -- family group decision making, community partnerships, and such permanency options as permanent guardianships, subsidized guardianships, permanent kinship care? With respect to any one of these, what’s the latest research show, how much use is being made of the method, what seem to be the pros and cons, and the important issues? On intensive home visitation, same questions and also: does mandatory home visitation make sense as an idea, and would it be constitutional, or should the home visitation movement retain the voluntary-only model? Are there other promising forms of early intervention that should be pursued? Should we
make increased use of adoption or no? And if we should, what are promising directions to pursue? What are the pros and cons of, e.g., concurrent planning, expedited TPR (termination of parental rights)? How is ASFA (Adoption and Safe Families Act) working out?

**Week 4 – Sept. 30 (4:30pm-6:00pm)**

**Adoption and Reproduction**

*Families by Law: Introduction*  
Text 1-6

*Families by Law: VII Feminism Introduction*  
Text 257-58

Lacey: “‘O Wind, Remind Him That I Have No Child’: Infertility and Feminist Jurisprudence”  
Text 273-79

Supp. 156-65

Supp. 166-71

**Adoption Rules and Regulations**

Hollinger: “State and Federal Adoption Laws”  
Text 37-42

Supp. 172-75

Radin: “Market-Inalienability”  
Text 319-323

Brinig: “The Effect of Transactions Costs on the Market for Babies”  
Text 324-328

Gill: “Adoption Agencies and the Search for the Ideal Family, 1918-1965”  
Text 64-71

Bartholet, FAMILY BONDS, *supra*: “Adoption and the Parental Screening System,” pp. 70-85  
Supp. 176-83

Hollinger: “Analysis of the Proposed Uniform Adoption Act (UAA) of 1994”  
Text 47-51

**Issues and Topics:** Do the rules surrounding adoption on the one hand, and reproduction on the other, make sense, and if so what kind of sense? Would you change them, and if so how? Do current adoption rules for screening adoptive parents and matching them
with children make sense or no? If no, how should they be changed? Does the no-money rule make sense in the adoption area and if so why, and how do the money issues here relate to those in the area of reproductive technology?

**Week 5 – Oct. 7 (4:30pm-6:00pm)**

**Adoption and Race/Culture/Nationality: Transracial Adoption**

Film: *Losing Isaiah*

**Week 6 – Oct. 14 (4:30pm-6:00pm)**

**Adoption and Race/Culture/Nationality: Transracial Adoption cont’d**


Woodhouse: “Are You My Mother?: Conceptualizing Children’s Identity Rights in Transracial Adoptions” Text 194-199

Haslanger: “Racial Geographies” Text 208-210

Allen-Castellitto: “Does a Child Have a Right to a Certain Identity?” Text 211-214


For related HHS Letter of Notification imposing $1.8 million fine, see http://www.law.harvard.edu/faculty/bartholet/mepa.php


Bartholet: “Private Race Preferences in Family Formation” Text 205-207

**Issues and Topics:** Do current rules treating children as “belonging” to their racial, ethnic, religious and other groups of origin make sense or no, and if no how should they be changed? Was Congress right to pass MEPA (Multiethnic Placement Act) in its
current form or no? What is happening under MEPA – is it beginning to have an impact, what forms are resistance to MEPA taking? How does the film, Losing Isaiah, affect your thinking on these issues, and how do the readings affect your thinking on the film?

Week 7 – Oct. 21 (4:30pm-6:00pm)

Adoption and Race/Culture/Nationality cont’d: International Adoption

Film: Casa de los Babys

FLYOUT WEEK

Week 8 – Nov. 4 (4:30pm-6:00pm)

Adoption and Race/Culture/Nationality cont’d: Indian Child Welfare Act (ICWA) and International Adoption

ICWA:

Metteer: “Pigs in Heaven: A Parable of Native American Adoption under the Indian Child Welfare Act”

International Adoption:

Bartholet, “International Adoption,” Chapter in forthcoming text on adoption to be published in 2005


Issues and Topics: What are the pros and cons of ICWA, its family preservation standards (e.g. no removal from parent without proof beyond reasonable doubt of unfitness), its preferences for foster and adoptive placement within the tribe and the Indian community, its grant of rights to tribes to intervene in opposition to birth parent wishes? What evidence is there as to how it’s working, what its impact has been (what
are chances of Native American kids being adopted as vs. being held in foster or institutional care, what is quality of foster and institutional care, etc.)? What do you think re some of current disputes over ICWA interpretation (e.g. existing Indian family doctrine), and what should be policy directions for future?

How do you assess related issues in international adoption, and the different stories portrayed in Casa de los Babys, Bartholet, and Dillon?

Week 9 – Nov. 11 (4:30pm-6:00pm)

What Counts as Reproductive Freedom? Abortion, Fetal Abuse, Sex Selection, and Fetal Research/Experimentation/Eugenics/Cloning


Optional Reading: NOBODY’S CHILDREN, More on Substance Abuse Facts, pp. 67-81 Supp. 335-42

“Substance Abuse by Pregnant Women”


--Notes


Kahn, “We’ll Pay You Not to Have Kids,”


Kahn, “We’ll Pay You Not to Have Kids,”


Issues and Topics: What constitutional and legislative standards are appropriate in the area of fetal abuse? What approach should be taken to substance abuse in the child welfare area, and of the approaches discussed in the materials, which are promising, and which problematic? What’s happening with family drug court approaches, with mandatory treatment, with criminal sanctions? When if ever is it appropriate to require or to encourage through financial pressure, contraception or sterilization? Should sex selection be subject to regulation? What if any rules should apply to limit private choice in the areas of eugenics, cloning, and fetal research?

Week 10 – Nov. 18 (4:30pm-6:00pm)

High Tech Infertility Treatment Used to Create Traditional Families


Bartholet, FAMILY BONDS, supra, “In Vitro Fertilization and its Progeny,” pp. 198-217


J.B. v. M.B., 783 A.2d 707 (NJ 2001)

Kovalevsky, “Do assisted reproductive technologies cause adverse fetal outcomes?,” Fertility and Sterility, 79, No. 6 (6/03)


Jones, Schnorr, “Multiple Pregnancies: A Call to Action,” Fertility and Sterility, Vol. 75, No. 1 (1/01)


The Hastings Center, Reprogenetics and Public Policy (2003)

Great Britain: Human Fertilisation and Embryology Authority Twelfth Annual Report 2002/03

Executive Summary, Reproduction and Responsibility: The Regulation of New Biotechnologies, The President’s Council on Bioethics, March 2004

Issues and Topics: What rules and policies should surround use of high tech infertility treatment? Should we be encouraging or discouraging such treatment? Should we do more to protect consumers, discourage older consumers, protect against multiple pregnancies/births, and if so what should we do? What constitutional and other standards should govern custody disputes involving frozen embryos? What can we learn from other countries’ approaches as exemplified in the readings from Ryan and the Reports by the Hastings Center and Great Britain’s Human Fertilisation and Embryology Authority?

THANKSGIVING BREAK
Week 11 – Dec. 2 (4:30pm-6:00pm)

Collaborative Reproduction

FAMILY BONDS, supra Week 4: “Modern Child Production: The Marketing of Genes, Wombs, Embryos, and Babies,” pp. 218-29  
Supp. 471-76

Artificial Insemination
--In Re Adoption of Anonymous, 345 N.Y.S.2d 430 (Surr.Ct. 1973)  
Supp. 477-80
--Mundy, “A World of Their Own: In the eyes of his parents, if Gauvin Hughes McCullough turns out to be deaf, that will be just perfect,” The Washington Post Magazine, March 31, 2002  
Supp. 481-98

Traditional Surrogacy
--In Re Baby M, 537 A.2d 1227 (N.J. 1988)  
Supp. 499-508

Gestational Surrogacy
Text 287-90
Supp. 509-13

Post-humous Conception
Supp. 514-19
Supp. 520

“Egg Mother and Gestational Mother Listed Jointly on Birth Certificate,” The Bergen Record (3/12/03)  
Supp. 521

“Ad seeks egg donor for $100,000,” The Boston Globe, p.A19 (2/9/00)  
Supp. 522

Supp. 523-24

Stolberg, “Clinics Full of Frozen Embryos Offer a New Route to Adoption,” The New York Times (2/25/01)  
Supp. 525-26

Supp. 527-39

Issues and Topics: Should we encourage or discourage collaborative reproduction? What should the money rules be in this area, as compared to the adoption area? What
should the “openness” rules be in this area, as compared to the adoption area? What are
the important issues and how should they be resolved in each of the following areas:
donor/vendor eggs, donor/vendor sperm, donor/vendor embryos, donor/vendor
gestational services (traditional and gestational surrogacy), freezing of
eggs/sperm/embryos for one’s own future use, postmortem procurement and/or use of
gametes/embryos for reproductive purposes, eugenics? And again, as with Week 10
issues, what can we learn from other countries’ approaches?

Week 12 – Dec. 9 (4:30pm-6:00pm)

Gay and Lesbian Parenting

Film: Daddy and Papa

WINTER BREAK

Week 13 – Feb. 3 (4:30pm-6:00pm)

Gay and Lesbian Parenting cont’d

Exclusion from Adoption:

Families by Law: Single, Gay, and Lesbian Adoptive Parents and Their Children Text 233-234

Second-Parent Adoptions:
--Hollinger: “Second Parent Adoptions Protect Children with Two Mothers or Two Fathers” Text 235-238
--State Appeals Court Rulings That Deny or Approve Second Parent Adoptions by Same-Sex Couples Text 239-247

De Facto Parenting Doctrine:

Civil Union and Marriage:


Research:
Stacey & Biblarz: “(How) Does the Sexual Orientation of Parents Matter?”

**Issues and Topics:** What is the state of the law re gay parenting and what should it be? How did we get here? Where are we going? What does all this say of interest about trends in the law of parenting generally (as vs. gay parenting specifically)? How does the film, *Daddy and Papa*, affect your thinking on the issues?

**Week 14 – Feb. 10 (4:30pm-6:00pm)**

**Challenging the Nuclear Biological Family Form**


**Openness Issues**

--*Families by Law*: IV Adoption and Confidentiality Introduction Text 123-24
--Herman: “We Have a Long Way to Go: Attitudes Toward Adoption” Text 134-135
--Baer et al.: “The Basic Bastard” Text 146-148
--*Families by Law*: V Adoption With Continuing Contact: “Open Adoption” Introduction Text 157-58
--Hollinger: “Overview of Legal Status of Post-Adoption Contact Agreements” Text 159-162
--Modell: “Kinship with Strangers: Adoption and Interpretations of Kinship in American Culture” Text 177-184


Leon: “Nature in Adoptive Parenthood” Text 88-90
**Issues and Topics:**

Law and policy surrounding adoption, procreation, and parenting has traditionally placed a high value on biologically linked parenting. The right to procreate and to hold onto the product of procreation is surrounded by constitutional and other protections. Adoption is regulated in a highly restrictive way because of the value placed on keeping children with their birth parents and the suspicion with which transferring them to non-biological parents is viewed. The world of commercial/collaborative reproduction seems to be jettisoning this notion that biologically linked parenting is important. How do we explain what’s going on and reconcile the two worlds? What should policy directions for the future be in each of these worlds with respect to, e.g., money rules, parental screening, and state supervision of the creation of non-biologically linked parent-child families? How important is biologically linked parenting, or is it not important at all?

To the degree that we continue to form families where the child has one or more genetic/biological forebears who are not functioning as social parents, should we structure these new families in the nuclear form, or should we encourage openness and communication between the genetic/biological parents, the primary social parents, and the child? Should we resolve these issues in similar ways in the adoption arena as in the reproductive technology arena (e.g. if we give adoptees rights to access birth records upon adulthood should we give donor insemination offspring a similar right to access records related to the sperm donor upon adulthood)? Should adult parenting parties decide these issues by contract, or should state policy decide based on some consideration of children’s best interests? Where on the spectrum of openness should we be — sharing of identifying information based on consent of all interested parties, or based on one party’s right to information, sharing during childhood or upon adulthood, consensual visitation by genetic/bio “parents” during childhood, or enforceable visitation rights by such parents? Where is the movement for enforceable openness going, and what are the pros and cons? How much non-identifying information should adoptive parents get, and should it include the right to genetic screening, and if so with respect to what types of information?

What does sociobiology/evolutionary psychology have to offer in understanding these issues?