Sex and the Law
Ethics, Religion, & Sex
Why Are There Sex Laws?

• Every day millions of people in the United States engage in sexual behaviors that are illegal.

• Sexual legislation dates back certainly to the time of the Old Testament.

• One historical rationale for sex laws was to protect the integrity of the family from adultery or desertion of a spouse.
Why Are There Sex Laws?

• Most societies regulate sexual behavior by custom and by law.
• In the U.S. there is no consensus about which morals should be codified into law.
• The conflict in our attitudes toward many kinds of sexual activity resulted in the Victorian compromise.
Sex Outside Marriage

- **Fornication** - sex before marriage.
- **Adultery** (extramarital sex) - sex by persons married to others.
  - Has always been regarded as a grave matter in the Judeo-Christian tradition.
  - Many contemporary ethicists argue for a more humane approach to those involved. (John 8: 2-11, New Testament)
Contraception

- Roman Catholics and Orthodox Jews oppose any “artificial” means of contraception.
- Other Jews and most Protestants favor responsible family planning by married couples.
- Most ethicists suggest that sexually active unmarried persons ought to be using birth control.
Abortion

• Prochoice position - takes at least 2 forms:
  – Absolute - pregnancy is solely the concern of a woman.
  – Modified - suggests there may be many situations in which abortion is the least bad choice.

• Therapeutic abortion - termination of pregnancy when life or mental health of the woman is threatened or in cases of trauma, such as incest or rape.
Homosexuality

• Religious community has been engaged in vigorous debate on the subject of homosexuality.

• *Rejectionism* - opposes any sexual acts between persons of the same gender.

• *Modified rejection or qualified acceptance* - regards homosexual orientation as morally neutral but rejects homosexual acts.
Homosexuality

• A revisionist view of the bible and church tradition favors full acceptance of lesbian and gay persons.
  – In 2003, amid much controversy, the Episcopal church approved the consecration of an openly gay priest as bishop.
  – Several mainline Protestant groups are actively debating and studying the question of same-sex unions.
AIDS

• Has raised a host of complex and difficult ethical issues for individuals, religious communities, and society as a whole.

• Religious responses range from declaring AIDS to be God’s punishment on sinners to actively organizing to minister to persons with AIDS.
Technology and Sexual Ethics

• A major challenge to ethicists today is the rapid development of technologies that raise new moral issues before the old ones have been resolved.

• Issue of abortion is intensified by technological advances and will get more complicated in the future.
Technology and Sexual Ethics: Reproductive Technologies

- New reproductive technologies enable people to conceive children outside the “normal” process of sexual intercourse:
  - artificial insemination
  - in vitro fertilization
  - embryo transfer
  - surrogacy
What Kinds of Sex Laws Are There?

- Crimes of exploitation and force
  - Rape
  - Sexual abuse of children
  - Incest
What Kinds of Sex Laws Are There?

• Criminal consensual acts
  – Adultery is a crime in 24 states.
    • Actually a felony in Wisconsin & Michigan
  – Sodomy is prohibited in 24 states.
  – Laws discriminate against gays and lesbians.
What Kinds of Sex Laws Are There?

• Crimes against good taste
  – Exhibitionism
  – Voyeurism
  – Solicitation
  – Disorderly conduct
  – General lewdness
What Kinds of Sex Laws Are There?

• Crimes against reproduction
  – Comstock laws included a ban on the giving of information concerning the prevention of conception.

• Criminal commercial sex
  – Prostitution illegal except in Nevada.
  – Obscenity
Sex-Law Enforcement

- Enforcement is inconsistent.
- Arrest practices with regard to commercial sex workers are discriminatory.
- More violations of the public good result from the enforcement of sex laws than from the acts they seek to prevent.
Trends in Sex-Law Reform

• Efforts in sex-law reform
  – Decriminalization of various kinds of sexual behavior previously outlawed.

• Right to privacy
  – The Supreme Court recognized the protected nature of consensual sexual conduct in one’s home.
Trends in Sex-Law Reform

• Challenges to laws that discriminate against gays, lesbians, commercial sex workers and other groups distinguished by sexual conduct have been based on the principle of equal protection.
Trends in Sex-Law Reform

• Victimless crimes
  – A sexual act performed by consenting adults that produces no legal harm, and neither of the participants is a victim.
  – Some consensual activities may result in moral, religious, or ethical harm.
The Problems of Obscenity and Pornography

- **Obscenity** - that which is foul, disgusting, or lewd.
- **Pornography** - literature, art, films, speech, etc. intended to be sexually arousing.
- Freedom of speech issues.
- Child pornography issues are more clear-cut.
- Zoning is used as an attempt to regulate and eliminate the sale of pornography.
The Controversy over Reproductive Freedom

• *Roe v. Wade* has been under attack since it was handed down by the Supreme Court in 1973.

• Opposition comes from a broad coalition of antiabortion groups known as “prolife:”
  – Roman Catholic Church
  – Evangelical Protestants
  – “New Right” organizations
  – Republican party
Ethnicity and Sex Laws

- The constitution promises equal protection to people of all races but people of color and low-income people are often at a disadvantage in the area of sexuality.
- Efforts at sex-law reform need to include a consideration of the law’s impact on people of color.
Sex and the Law in the Future

• Sex-law reform and backlash
  – It appears that the movement toward more permissive sex laws has achieved virtually all the gains it is likely to for the time being.
Sex and the Law in the Future

• New reproductive technologies raise very complex legal questions:
  – kinship
  – parental rights
  – parental responsibilities

• Currently, “There is no uniform, comprehensive, and enforceable system of data collection, monitoring, or oversight, for the biotechnologies affecting human reproduction.”