Excerpts from the Justices' Differing Opinions in

Griswold v. Connecticut

Justice Douglas [from the Majority Opinion]

The association of people is not mentioned in the Constitution nor in the Bill of Rights. The right to educate a child in a school of the parents' choice -- whether public or private or parochial -- is also not mentioned. Nor is the right to study any particular subject or any foreign language. Yet the First Amendment has been construed to include certain of those rights.

By *Pierce v. Society of Sisters, supra,* the right to educate one's children as one chooses is made applicable to the States by the force of the First and Fourteenth Amendments. By *Meyer v. Nebraska, supra,* the same dignity is given the right to study the German language in a private school. In other words, the State may not, consistently with the spirit of the First Amendment, contract the spectrum of available knowledge. The right of freedom of speech and press includes not only the right to utter or to print, but the right to distribute, the right to receive, the right to read (*Martin v. Struthers,* 319 U. S. 141, 143) and freedom of inquiry, freedom of thought, and freedom to teach (*see Wiemann v. Updegraff,* 344 U. S. 183, 195) -- indeed, the freedom of the entire university community. *Sweezy v. New Hampshire,* 354 U. S. 234, 249-250, 354 U. S. 261-263; *Barenblatt v. United States,* 360 U. S. 109, 112; *Baggett v. Bullitt,* 377 U. S. 360, 369. Without those peripheral rights, the specific rights would be less secure. And so we reaffirm the principle of the *Pierce* and the *Meyer* cases.

In *NAACP v. Alabama,* 357 U. S. 449, 462 we protected the "freedom to associate and privacy in one's associations," noting that freedom of association was a peripheral First Amendment right. Disclosure of membership lists of a constitutionally valid association, we held, was invalid

"as entailing the likelihood of a substantial restraint upon the exercise by petitioner's members of their right to freedom of association."

Ibid. In other words, the First Amendment has a penumbra where privacy is protected from governmental intrusion. In like context, we have protected forms of "association" that are not political in the customary sense, but pertain to the social, legal, and economic benefit of the members. *NAACP v. Button,* 371 U. S. 415, 430-431. In *Schware v. Board of Bar Examiners,* 353 U. S. 232, we held it not permissible to bar a lawyer from practice because he had once been a member of the Communist Party. The man's "association with that Party" was not shown to be "anything more than a political faith in a political party" (*id.* at 353 U. S. 244), and was not action of a kind proving bad moral character. *Id.* at 353 U. S. 245-246.

Those cases involved more than the "right of assembly" -- a right that extends to all, irrespective of their race or ideology. *De Jonge v. Oregon,* 299 U. S. 353. The right of "association," like the right of belief (*Board of Education v. Barnette,* 319 U. S. 624), is more than the right to attend a meeting; it

includes the right to express one's attitudes or philosophies by membership in a group or by affiliation with it or by other lawful means. Association in that context is a form of expression of opinion, and, while it is not expressly included in the First Amendment, its existence is necessary in making the express guarantees fully meaningful. The foregoing cases suggest that specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance. *See Poe v. Ullman,* 367 U. S. 497, 516-522 (dissenting opinion). Various guarantees create zones of privacy. The right of association contained in the penumbra of the First Amendment is one, as we have seen. The Third Amendment, in its prohibition against the quartering of soldiers "in any house" in time of peace without the consent of the owner, is another facet of that privacy. The Fourth Amendment explicitly affirms the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." The Fifth Amendment, in its Self-Incrimination Clause, enables the citizen to create a zone of privacy which government may not force him to surrender to his detriment. The Ninth Amendment provides: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

The Fourth and Fifth Amendments were described in *Boyd v. United States,* 116 U. S. 616, 630, as protection against all governmental invasions "of the sanctity of a man's home and the privacies of life." * We recently referred in *Mapp v. Ohio,* 367 U. S. 643, 656, to the Fourth Amendment as creating a "right to privacy, no less important than any other right carefully an particularly reserved to the people." *See* Beaney, The Constitutional Right to Privacy, 1962 Sup.Ct.Rev. 212; Griswold, The Right to be Let Alone, 55 Nw.U.L.Rev. 216 (1960).

We have had many controversies over these penumbral rights of "privacy and repose." *See, e.g., Breard v. Alexandria,* 341 U. S. 622, 626, 341 U. S. 644; *Public Utilities Comm'n v. Pollak,* 343 U. S. 451; *Monroe v. Pape,* 365 U. S. 167; *Lanza v. New York,* 370 U. S. 139; *Frank v. Maryland,* 359 U. S. 360; *Skinner v. Oklahoma,* 316 U. S. 535, 541. These cases bear witness that the right of privacy which presses for recognition here is a legitimate one.

The present case, then, concerns a relationship lying within the zone of privacy created by several fundamental constitutional guarantees. And it concerns a law which, in forbidding the use of contraceptives, rather than regulating their manufacture or sale, seeks to achieve its goals by means having a maximum destructive impact upon that relationship. Such a law cannot stand in light of the familiar principle, so often applied by this Court, that a

"governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms."

NAACP v. Alabama, 377 U. S. 288, 307. Would we allow the police to search the sacred precincts of marital bedrooms for telltale signs of the use of contraceptives? The very idea is repulsive to the notions of privacy surrounding the marriage relationship.

We deal with a right of privacy older than the Bill of Rights -- older than our political parties, older than our school system. Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions.

Reversed.

MR. JUSTICE GOLDBERG, whom THE CHIEF JUSTICE and MR. JUSTICE BRENNAN join, concurring.

I agree with the Court that Connecticut's birth control law unconstitutionally intrudes upon the right of marital privacy, and I join in its opinion and judgment. Although I have not accepted the view that "due process," as used in the Fourteenth Amendment, incorporates all of the first eight Amendments (*see* my concurring opinion in *Pointer v. Texas,* 380 U. S. 400, 410, and the dissenting opinion of MR. JUSTICE BRENNAN in *Cohen v. Hurley,* 366 U. S. 117, 154), I do agree that the concept of liberty protects those personal rights that are fundamental, and is not confined to the specific terms of the Bill of Rights. My conclusion that the concept of liberty is not so restricted, and that it embraces the right of marital privacy, though that right is not mentioned explicitly in the Constitution, [Footnote 1] decisions of this Court, referred to in the Court's opinion, and by the language and history of the Ninth Amendment. In reaching the conclusion that the right of marital privacy is protected as being within the protected penumbra of specific guarantees of the Bill of Rights, the Court refers to the Ninth Amendment, *ante* at 381 U. S. 484. I add these words to emphasize the relevance of that Amendment to the Court's holding.

The Court stated many years ago that the Due Process Clause protects those liberties that are "so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Snyder v. Massachusetts,* 291 U. S. 7, 105. In *Gitlow v. New York,* 268 U. S. 652, 666, the Court said:

"For present purposes, we may and do assume that freedom of speech and of the press -- which are protected by the First Amendment from abridgment by Congress -- are among the *fundamental* personal rights and 'liberties' protected by the due process clause of the Fourteenth Amendment from impairment by the States."

(Emphasis added.)

And, in *Meyer v. Nebraska,* 262 U. S. 390, 399, the Court, referring to the Fourteenth Amendment, stated:

"While this Court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration, and some of the included things have been definitely stated. Without

doubt, it denotes not merely freedom from bodily restraint, but also [for example,] the right . . . to marry, establish a home and bring up children. . . ."

This Court, in a series of decisions, has held that the Fourteenth Amendment absorbs and applies to the States those specifics of the first eight amendments which express fundamental personal rights. [Footnote 2] The language and history of the Ninth Amendment reveal that the Framers of the Constitution believed that there are additional fundamental rights, protected from governmental infringement, which exist alongside those fundamental rights specifically mentioned in the first eight constitutional amendments. The Ninth Amendment reads, "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." The Amendment is almost entirely the work of James Madison. It was introduced in Congress by him, and passed the House and Senate with little or no debate and virtually no change in language. It was proffered to quiet expressed fears that a bill of specifically enumerated rights [Footnote 3] could not be sufficiently broad to cover all essential rights, and that the specific mention of certain rights would be interpreted as a denial that others were protected. [Footnote 4]

In presenting the proposed Amendment, Madison said:

"It has been objected also against a bill of rights that, by enumerating particular exceptions to the grant of power, it would disparage those rights which were not placed in that enumeration, and it might follow, by implication, that those rights which were not singled out were intended to be assigned into the hands of the General Government, and were consequently insecure. This is one of the most plausible arguments I have ever heard urged against the admission of a bill of rights into this system, but I conceive that it may be guarded against. I have attempted it, as gentlemen may see by turning to the last clause of the fourth resolution [the Ninth Amendment]."

I Annals of Congress 439 (Gales and Seaton ed. 1834). Mr. Justice Story wrote of this argument against a bill of rights and the meaning of the Ninth Amendment:

"In regard to . . . [a] suggestion, that the affirmance of certain rights might disparage others, or might lead to argumentative implications in favor of other powers, it might be sufficient to say that such a course of reasoning could never be sustained upon any solid basis. . . . But a conclusive answer is that such an attempt may be interdicted (as it has been) by a positive declaration in such a bill of rights that the enumeration of certain rights shall not be construed to deny or disparage others retained by the people."

II Story, Commentaries on the Constitution of the United States 626-627 (5th ed. 1891). He further stated, referring to the Ninth Amendment:

"This clause was manifestly introduced to prevent any perverse or ingenious misapplication of the well known maxim that an affirmation in particular cases implies a negation in all others, and, *e converso,* that a negation in particular cases implies an affirmation in all others."

Id. at 651. These statements of Madison and Story make clear that the Framers did not intend that the first eight amendments be construed to exhaust the basic and fundamental rights which the Constitution guaranteed to the people. [Footnote 5]

While this Court has had little occasion to interpret the Ninth Amendment, [Footnote 6] "[i]t cannot be presumed that any clause in the constitution is intended to be without effect." *Marbury v. Madison,* 1 Cranch 137, 5 U. S. 174. In interpreting the Constitution, "real effect should be given to all the words it uses." *Myers v. United States,* 272 U. S. 52, 151. The Ninth Amendment to the Constitution may be regarded by some as a recent discovery, and may be forgotten by others, but, since 1791, it has been a basic part of the Constitution which we are sworn to uphold. To hold that a right so basic and fundamental and so deep-rooted in our society as the right of privacy in marriage may be infringed because that right is not guaranteed in so many words by the first eight amendments to the Constitution is to ignore the Ninth Amendment, and to give it no effect whatsoever. Moreover, a judicial construction that this fundamental right is not protected by the Constitution because it is not mentioned in explicit terms by one of the first eight amendments or elsewhere in the Constitution would violate the Ninth Amendment, which specifically states that

"[t]he enumeration in the Constitution, of certain rights, shall not be *construed* to deny or disparage others retained by the people." (Emphasis added.)

A dissenting opinion suggests that my interpretation of the Ninth Amendment somehow "broaden[s] the powers of this Court." *Post* at 381 U. S. 520. With all due respect, I believe that it misses the import of what I am saying. I do not take the position of my Brother BLACK in his dissent in *Adamson v. California,* 332 U. S. 46, 68, that the entire Bill of Rights is incorporated in the Fourteenth Amendment, and I do not mean to imply that the Ninth Amendment is applied against the States by the Fourteenth. Nor do I mean to state that the Ninth Amendment constitutes an independent source of rights protected from infringement by either the States or the Federal Government. Rather, the Ninth Amendment shows a belief of the Constitution's authors that fundamental rights exist that are not expressly enumerated in the first eight amendments, and an intent that the list of rights included there not be deemed exhaustive. As any student of this Court's opinions knows, this Court has held, often unanimously, that the Fifth and Fourteenth Amendments protect certain fundamental personal liberties from abridgment by the Federal Government or the States. *See, e.g., Bolling v. Sharpe,* 347 U. S. 497; *Aptheker v. Secretary of State,* 378 U. S. 500; *Kent v. Dulles,* 357 U. S. 116, *Cantwell v. Connecticut,* 310 U. S. 296; *NAACP v. Alabama,* 357 U. S. 449; *Gideon v. Wainwright,* 372 U. S. 335; *New York Times Co. v. Sullivan,* 376 U. S. 254. The Ninth Amendment simply shows the intent of the Constitution's authors that other fundamental personal rights should not be denied such protection or disparaged in any other way simply because they are not specifically listed in the first eight constitutional amendments. I do not see how this broadens the authority of the Court; rather it serves to support what this Court has been doing in protecting fundamental rights.

MR. JUSTICE HARLAN, concurring in the judgment.

I fully agree with the judgment of reversal, but find myself unable to join the Court's opinion. The reason is that it seems to me to evince an approach to this case very much like that taken by my Brothers BLACK and STEWART in dissent, namely: the Due Process Clause of the Fourteenth Amendment does not touch this Connecticut statute unless the enactment is found to violate some right assured by the letter or penumbra of the Bill of Rights. In other words, what I find implicit in the Court's opinion is that the "incorporation" doctrine may be used to restrict the reach of Fourteenth Amendment Due Process. For me, this is just as unacceptable constitutional doctrine as is the use of the "incorporation" approach to impose upon the States all the requirements of the Bill of Rights as found in the provisions of the first eight amendments and in the decisions of this Court interpreting them. *See, e.g.,* my concurring opinions in *Pointer v. Texas,* 380 U. S. 400, 408, and *Griffin v. California,* 380 U. S. 609, 615, and my dissenting opinion in *Poe v. Ullman,* 367 U. S. 497, 522, at p P. 539-545.

Justice Harlan dissenting in *Poe v. Ullman*

> In reviewing state legislation, whether considered to be in the exercise of the State's police powers or in provision for the health, safety, morals or welfare of its people, it is clear that what is concerned are "the powers of government inherent in every sovereignty." *The License Cases,* 5 How. 504, 46 U. S. 583. Only to the extent that the Constitution so requires may this Court interfere with the exercise of this plenary power of government. *Barron v. Mayor of City of Baltimore,* 7 Pet. 243. But precisely because it is the Constitution alone which warrants judicial interference in sovereign operations of the State, the basis of judgment as to the constitutionality of state action must be a rational one, approaching the text which is the only commission for our power not in a literalistic way, as if we had a tax statute before us, but as the basic charter of our society, setting out in spare but meaningful terms the principles of government. *M'Culloch v. Maryland,* 4 Wheat. 316. But as inescapable as is the rational process in constitutional adjudication in general, nowhere is it more so than in giving meaning to the prohibitions of the Fourteenth Amendment, and, where the Federal Government is involved, the Fifth Amendment, against the deprivation of life, liberty or property without due process of law.
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> It is but a truism to say that this provision of both Amendments is not self-explanatory. As to the Fourteenth, which is involved here, the history of the Amendment also sheds little light on the meaning of the provision. Fairman, Does the Fourteenth Amendment Incorporate the Bill of Rights, 2 Stan.L.Rev. 15. It is important to note, however, that two views of the Amendment have not been accepted by this Court as delineating its scope. One view, which was ably and insistently argued in response to what were felt to be abuses by this Court of its reviewing power, sought to limit the provision to a guarantee of procedural fairness. *See Davidson v. City of New Orleans,* 96 U. S. 97, 105; Brandeis, J., in *Whitney v. California,* 274 U. S. 357, at 274 U. S. 373; Warren, The New "Liberty" under the 14th Amendment, 39 Harv.L.Rev. 431; Reeder, The Due Process Clauses and "The Substance of Individual Rights," 58 U.Pa.L.Rev. 191; Shattuck, The True Meaning of the Term "Liberty" in Those Clauses in the Federal and State Constitutions Which Protect "Life, Liberty, and Property," 4 Harv.L.Rev. 365. The other view which has been rejected would have it that the Fourteenth Amendment, whether by way of the Privileges and Immunities Clause or the Process Clause, applied against the States only and precisely those restraints which had, prior to the Amendment, been applicable merely

to federal action. However, "due process," in the consistent view of this Court, has even been a broader concept than the first view, and more flexible than the second.

Were due process merely a procedural safeguard, it would fail to reach those situations where the deprivation of life, liberty or property was accomplished by legislation which by operating in the future could, given even the fairest possible procedure in application to individuals, nevertheless destroy the enjoyment of all three. *Compare, e.g., Selective Draft Law Cases,* 245 U. S. 366; *Butler v. Perry,* 240 U. S. 328; *Korematsu v. United States,* 323 U. S. 214. Thus the guaranties of due process, though having their roots in Magna Carta's "*per legem terrae*" and considered as procedural safeguards "against executive usurpation and tyranny," have in this country "become bulwarks also against arbitrary legislation." *Hurtado v. California,* 110 U. S. 516, at 110 U. S. 532.

However, it is not the particular enumeration of rights in the first eight Amendments which spells out the reach of Fourteenth Amendment due process, but rather, as was suggested in another context long before the adoption of that Amendment, those concepts which are considered to embrace those rights "which are . . . fundamental; which belong . . . to the citizens of all free governments," *Corfield v. Coryell,* 4 Wash.C.C. 371, 380, for "the purposes (of securing) which men enter into society," *Calder v. Bull,* 3 Dall. 386, 3 U. S. 388. Again and again, this Court has resisted the notion that the Fourteenth Amendment is no more than a shorthand reference to what is explicitly set out elsewhere in the Bill of Rights. *The Slaughter-House Cases,* 16 Wall. 36; *Walker v. Sauvinet,* 92 U. S. 90; *Hurtado v. California,* 110 U. S. 516; *Presser v. Illinois,* 116 U. S. 252; *In re Kemmler,* 136 U. S. 436; *Twining v. New Jersey,* 211 U. S. 78; *Palko v. Connecticut,* 302 U. S. 319. Indeed, the fact that an identical provision limiting federal action is found among the first eight Amendments, applying to the Federal Government, suggests that due process is a discrete concept which subsists as an independent guaranty of liberty and procedural fairness, more general and inclusive than the specific prohibitions. *See Mormon Church v. United States,* 136 U. S. 1; *Downes v. Bidwell,* 182 U. S. 244; *Hawaii v. Mankichi,* 190 U. S. 197; *Balzac v. Porto Rico,* 258 U. S. 298; *Farrington v. Tokushige,* 273 U. S. 284; *Bolling v. Sharpe,* 347 U. S. 497.

Due process has not been reduced to any formula; its content cannot be determined by reference to any code. The best that can be said is that, through the course of this Court's decisions, it has represented the balance which our Nation, built upon postulates of respect for the liberty of the individual, has struck between that liberty and the demands of organized society. If the supplying of content to this constitutional concept has of necessity been a rational process, it certainly has not been one where judges have felt free to roam where unguided speculation might take them. The balance of which I speak is the balance struck by this country, having regard to what history teaches are the traditions from which it developed as well as the traditions from which it broke. That tradition is a living thing. A decision of this Court which radically departs from it could not long survive, while a decision which builds on what has survived is likely to be sound. No formula could serve as a substitute, in this area, for judgment and restraint.

It is this outlook which has led the Court continuingly to perceive distinctions in the imperative character of constitutional provisions, since that character must be discerned from a particular provision's larger context. And inasmuch as this context is one not of words, but of history and purposes, the full scope of the liberty guaranteed by the Due Process Clause cannot be found in or limited by the precise terms of the specific guarantees elsewhere provided in the Constitution. This "liberty" is not a series of isolated points pricked out in terms of the taking of property; the freedom of speech, press, and religion; the right to keep and bear arms; the freedom from unreasonable searches and seizures; and so on. It is a rational continuum which, broadly speaking, includes a freedom from all substantial arbitrary impositions and

purposeless restraints, *see Allgeyer v. Louisiana,* 165 U. S. 578; *Holden v. Hardy,* 169 U. S. 366; *Booth v. Illinois,* 184 U. S. 425; *Nebbia v. New York,* 291 U. S. 502; *Skinner v. Oklahoma,* 316 U. S. 535, 544 (concurring opinion); *Schware v. Board of Bar Examiners,* 353 U. S. 232, and which also recognizes, what a reasonable and sensitive judgment must, that certain interests require particularly careful scrutiny of the state needs asserted to justify their abridgment. *Cf. Skinner v. Oklahoma, supra; Bolling v. Sharpe, supra.*

In my view, the proper constitutional inquiry in this case is whether this Connecticut statute infringes the Due Process Clause of the Fourteenth Amendment because the enactment violates basic values "implicit in the concept of ordered liberty," *Palko v. Connecticut,* 302 U. S. 319, 325. For reasons stated at length in my dissenting opinion in *Poe v. Ullman, supra,* I believe that it does. While the relevant inquiry may be aided by resort to one or more of the provisions of the Bill of Rights, it is not dependent on them or any of their radiations. The Due Process Clause of the Fourteenth Amendment stands, in my opinion, on its own bottom.

MR. JUSTICE BLACK, with whom MR. JUSTICE STEWART joins, dissenting.

I agree with my Brother STEWART's dissenting opinion. And, like him, I do not to any extent whatever base my view that this Connecticut law is constitutional on a belief that the law is wise, or that its policy is a good one. In order that there may be no room at all to doubt why I vote as I do, I feel constrained to add that the law is every bit as offensive to me as it is to my Brethren of the majority and my Brothers HARLAN, WHITE and GOLDBERG, who, reciting reasons why it is offensive to them, hold it unconstitutional. There is no single one of the graphic and eloquent strictures and criticisms fired at the policy of this Connecticut law either by the Court's opinion or by those of my concurring Brethren to which I cannot subscribe -- except their conclusion that the evil qualities they see in the law make it unconstitutional.

Had the doctor defendant here, or even the nondoctor defendant, been convicted for doing nothing more than expressing opinions to persons coming to the clinic that certain contraceptive devices, medicines or practices would do them good and would be desirable, or for telling people how devices could be used, I can think of no reasons at this time why their expressions of views would not be protected by the First and Fourteenth Amendments, which guarantee freedom of speech. *Cf. Brotherhood of Railroad Trainmen v. Virginia ex rel. Virginia State Bar,* 377 U. S. 1; *NAACP v. Button,* 371 U. S. 415. But speech is one thing; conduct and physical activities are quite another. *See, e.g., Cox v. Louisiana,* 379 U. S. 536, 554-555; *Cox v. Louisiana,* 379 U. S. 559, 563-564; *id.* 379 U. S. 575-584 (concurring opinion); *Giboney v. Empire Storage & Ice Co.,* 336 U. S. 490; *cf. Reynolds v. United States,* 98 U. S. 145, 163-164. The two defendants here were active participants in an organization which gave physical examinations to women, advised them what kind of contraceptive devices or medicines would most likely be satisfactory for them, and then supplied the devices themselves, all for a graduated scale of fees, based on the family income. Thus, these defendants admittedly engaged

with others in a planned course of conduct to help people violate the Connecticut law. Merely because some speech was used in carrying on that conduct -- just as, in ordinary life, some speech accompanies most kinds of conduct -- we are not, in my view, justified in holding that the First Amendment forbids the State to punish their conduct. Strongly as I desire to protect all First Amendment freedoms, I am unable to stretch the Amendment so as to afford protection to the conduct of these defendants in violating the Connecticut law. What would be the constitutional fate of the law if hereafter applied to punish nothing but speech is, as I have said, quite another matter. The Court talks about a constitutional "right of privacy" as though there is some constitutional provision or provisions forbidding any law ever to be passed which might abridge the "privacy" of individuals. But there is not. There are, of course, guarantees in certain specific constitutional provisions which are designed in part to protect privacy at certain times and places with respect to certain activities. Such, for example, is the Fourth Amendment's guarantee against "unreasonable searches and seizures." But I think it belittles that Amendment to talk about it as though it protects nothing but "privacy." To treat it that way is to give it a niggardly interpretation, not the kind of liberal reading I think any Bill of Rights provision should be given. The average man would very likely not have his feelings soothed any more by having his property seized openly than by having it seized privately and by stealth. He simply wants his property left alone. And a person can be just as much, if not more, irritated, annoyed and injured by an unceremonious public arrest by a policeman as he is by a seizure in the privacy of his office or home.

One of the most effective ways of diluting or expanding a constitutionally guaranteed right is to substitute for the crucial word or words of a constitutional guarantee another word or words, more or less flexible and more or less restricted in meaning. This fact is well illustrated by the use of the term "right of privacy" as a comprehensive substitute for the Fourth Amendment's guarantee against "unreasonable searches and seizures." "Privacy" is a broad, abstract and ambiguous concept which can easily be shrunken in meaning but which can also, on the other hand, easily be interpreted as a constitutional ban against many things other than searches and seizures. I have expressed the view many times that First Amendment freedoms, for example, have suffered from a failure of the courts to stick to the simple language of the First Amendment in construing it, instead of invoking multitudes of words substituted for those the Framers used. *See, e.g., New York Times Co. v. Sullivan,* 376 U. S. 254, 293 (concurring opinion); cases collected in *City of El Paso v. Simmons,* 379 U. S. 497, 517, n. 1 (dissenting opinion); Black, The Bill of Rights, 35 N.Y.U.L.Rev. 865. For these reasons, I get nowhere in this case by talk about a constitutional "right of privacy" as an emanation from one or more constitutional provisions. [Footnote 2/1] I like my privacy as well as the next one, but I am nevertheless compelled to admit that government has a right to. invade it unless prohibited by some specific constitutional provision. For these reasons, I cannot agree with the Court's judgment and the reasons it gives for holding this Connecticut law unconstitutional.

MR. JUSTICE STEWART, whom MR. JUSTICE BLACK joins, dissenting.

Since 1879, Connecticut has had on its books a law which forbids the use of contraceptives by anyone. I think this is an uncommonly silly law. As a practical matter, the law is obviously unenforceable, except in the oblique context of the present case. As a philosophical matter, I believe

the use of contraceptives in the relationship of marriage should be left to personal and private choice, based upon each individual's moral, ethical, and religious beliefs. As a matter of social policy, I think professional counsel about methods of birth control should be available to all, so that each individual's choice can be meaningfully made. But we are not asked in this case to say whether we think this law is unwise, or even asinine. We are asked to hold that it violates the United States Constitution. And that I cannot do.

In the course of its opinion, the Court refers to no less than six Amendments to the Constitution: the First, the Third, the Fourth, the Fifth, the Ninth, and the Fourteenth. But the Court does not say which of these Amendments, if any, it thinks is infringed by this Connecticut law.

We are told that the Due Process Clause of the Fourteenth Amendment is not, as such, the "guide" in this case. With that much, I agree. There is no claim that this law, duly enacted by the Connecticut Legislature, is unconstitutionally vague. There is no claim that the appellants were denied any of the elements of procedural due process at their trial, so as to make their convictions constitutionally invalid. And, as the Court says, the day has long passed since the Due Process Clause was regarded as a proper instrument for determining "the wisdom, need, and propriety" of state laws. *Compare Lochner v. New York,* 198 U. S. 45, *with Ferguson v. Skrupa,* 372 U. S. 726. My Brothers HARLAN and WHITE to the contrary,

"[w]e have returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws."

Ferguson v. Skrupa, supra, at 372 U. S. 730

As to the First, Third, Fourth, and Fifth Amendments, I can find nothing in any of them to invalidate this Connecticut law, even assuming that all those Amendments are fully applicable against the States. [Footnote 3/1] It has not even been argued that this is a law "respecting an establishment of religion, or prohibiting the free exercise thereof." [Footnote 3/2] And surely, unless the solemn process of constitutional adjudication is to descend to the level of a play on words, there is not involved here any abridgment of

"the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. [Footnote 3/3]"

No soldier has been quartered in any house. [Footnote 3/4] There has been no search, and no seizure. [Footnote 3/5] Nobody has been compelled to be a witness against himself. [Footnote 3/6]

The Court also quotes the Ninth Amendment, and my Brother GOLDBERG's concurring opinion relies heavily upon it. But to say that the Ninth Amendment has anything to do with this case is to turn somersaults with history. The Ninth Amendment, like its companion, the Tenth, which this Court held "states but a truism that all is retained which has not been surrendered," *United States v. Darby,* 312 U. S. 100, 124, was framed by James Madison and adopted by the States simply to make clear that

the adoption of the Bill of Rights did not alter the plan that the *Federal* Government was to be a government of express and limited powers, and that all rights and powers not delegated to it were retained by the people and the individual States. Until today, no member of this Court has ever suggested that the Ninth Amendment meant anything else, and the idea that a federal court could ever use the Ninth Amendment to annul a law passed by the elected representatives of the people of the State of Connecticut would have caused James Madison no little wonder.

What provision of the Constitution, then, does make this state law invalid? The Court says it is the right of privacy "created by several fundamental constitutional guarantees." With all deference, I can find no such general right of privacy in the Bill of Rights, in any other part of the Constitution, or in any case ever before decided by this Court.