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Constitutional Interpretation: *Griswold & Brown v. Board of Ed.*

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**PHIL 102
Ethics, Politics, & Law**

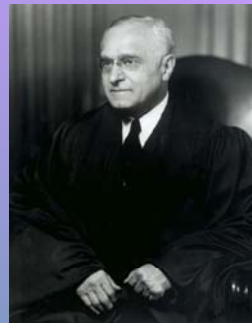
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Legal Realities

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- Legal actors are all human beings
- Is that all there is to the law?
- Supreme Court politics
- Earl Warren
- Felix Frankfurter
- Stanley Reed
- The quest for a unanimous ruling



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Fourteenth Amendment

Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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Fourteenth Amendment

- 1866 Congress
- 1866 Civil Rights Act
- Fourteenth Amendment
- Public education in the District of Columbia
- Are segregated schools a denial of Equal Protection?



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D **Plessey v. Ferguson (1896)**

- H • Louisiana law
- H • Homer Ferguson
- I • Civil disobedience
- L • Court's ruling 7-1
 - "We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it."
- 1 • Harlan's dissent
 - "But in view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law."
- 0 • Separate but equal
- 2



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D **Overturning Precedent**

- H • Racial precedents
- I • Gender precedents
- L • *Roe v. Wade* debate
- L • *Lawrence v. Texas*
- 1 • Court sidesteps whether they are overturning *Plessey*
- 0 • In effect they are, and almost everyone agrees this is a good thing.
- 2

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Constructive Interpretation and *Brown v. Board of Ed.*

- Facts of the case
- 14th Amendment
 - Concrete intention
 - Abstract intention
- Precedent
- What casts all of this in its **best** light?
- Chief Justice Warren's interpretation
- History's validation



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