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Griswold v. Connecticut

PHIL 102

Ethics, Politics, & Law

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Quickie On Analytical Paper

- Find an “academic” controversy
- Don’t write for your professor
- Simple outline:
 - Section 1 – one side
 - Section 2 – other side
 - Section 3 – your position
- Where in the Constitution is the right to [marital] privacy to be found?



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D Connecticut Laws

H The statutes whose constitutionality is involved in this appeal are §§ 53-32 and 54-196 of the General Statutes of Connecticut (1958 rev.). The former provides:

L Any person who uses any drug, medicinal article or instrument for the purpose of preventing conception shall be fined not less than fifty dollars or imprisoned not less than sixty days nor more than one year or be both fined and imprisoned.

1 Section 54-196 provides:

0 Any person who assists, abets, counsels, causes, hires or commands another to commit any offense may be prosecuted and punished as if he were the principal offender.



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D Constitutional History

- H • Precedent
- I • Substantive Due Process
- L • *Tileston v. Ullman* (1939)
- 1 • Legal standing
- 0 • *Poe v. Ullman* (1961)
- 2 • “Ripeness”
- 2 • Test case



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D The Dissenters

- H** • Justice Hugo Black
- I** • Justice Potter Stewart
- L** • Constitutional conservatives
- Each wrote a dissenting opinion
- Each signed on to the other's
- Law is silly, asinine, etc.
- 1** • Democratic majorities have the right to pass silly laws
- 0** • No right to privacy in the Constitution
- 2**



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D Penumbra Argument

- H** • Justice William O. Douglas
- I** • Opinion of the Court
- L** • Only one other taker
- Charge of "Substantive Due Process"
- "specific guarantees ... have penumbras, formed by emanations from those guarantees that help give them life and substance"
- 1** • "zones of privacy"
- 0** • [Marital] privacy is to be found in the penumbra of the Bill of Rights
- 2** • Implications of the argument

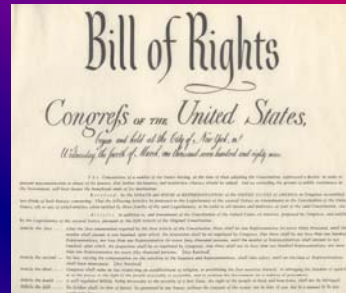


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Ninth Amendment

- The debate about a Bill of Rights
- The compromise
- Amendment Nine
- The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.
- Unstated rights?
- Implication of the argument

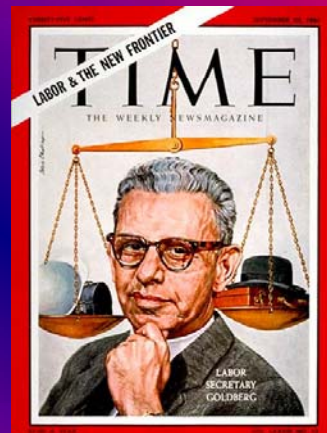


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Ninth Amendment Argument

- Arthur Goldberg
- Two other takers
- Law journal article
- ACLU's strategy
- Sympathetic to the 14th Amendment argument
- [Marital] privacy is an unenumerated right under the Ninth Amendment



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Fourteenth Amendment

- Post-Civil War amendments
- Amendment Fourteen
- 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.

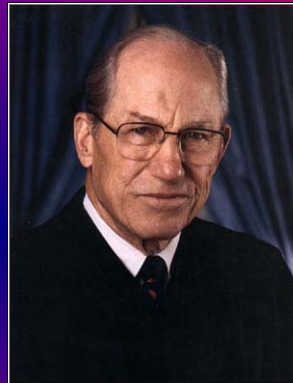


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Procedural Due Process Argument

- Justice Byron White
- Procedure/substance
- Proper legal procedure
- Connecticut law is incoherent
- State's oral argument
- Purpose of the law
- Protecting the integrity of marriage makes no sense when the law is applied to married couples



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Substantive Due Process Argument

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- Justice John Marshall Harlan
- Dissent in *Poe v. Ullman*
- 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.



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