Griswold v. Connecticut

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***Griswold v. Connecticut*, 381 U.S. 479 (1965),[1] is a landmark case in the United States in which the Supreme Court of the United States ruled that the Constitution protected a right to privacy. The case involved a Connecticut "Comstock law" that prohibited any person from using "any drug, medicinal article or instrument for the purpose of preventing conception." By a vote of 7–2, the Supreme Court invalidated the law on the grounds that it violated the "right to marital privacy", establishing the basis for the right to privacy with respect to intimate practices. This and other cases view the right to privacy as a right to "protect[ion] from governmental intrusion."**

Although the Bill of Rights does not explicitly mention "privacy", Justice William O. Douglas wrote for the majority that the right was to be found in the "penumbras" and "emanations" of other constitutional protections, such as the self-incrimination clause of the Fifth Amendment. Justice Arthur Goldberg wrote a concurring opinion in which he used the Ninth Amendment in support of the Supreme Court's ruling. Justice Arthur Goldberg and Justice John Marshall Harlan II wrote concurring opinions in which they argued that privacy is protected by the due process clause of the Fourteenth Amendment. Justice Byron White also wrote a concurrence based on the due process clause.

Estelle Griswold standing outside the Planned Parenthood clinic in April, 1963, which was closed pending a decision of the U.S. Supreme Court regarding a Connecticut state law forbidding the sale or use of contraceptives.[2]

***Griswold v. Connecticut* originated as a prosecution under the Connecticut Comstock Act of 1879. The law made it illegal to use of "any drug, medicinal article, or instrument for the purpose of preventing conception(...)" and subject to 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] Although almost never enforced, Massachusetts and Connecticut were the only two states that still had this type of statute on their statute books by the 1950s.**

From the late 19th century to the beginning of the 20th century in the United States physicians largely avoided the publication of any material related to birth control, even when they often recommended or at least gave advice regarding it to their married patients. It was not until Margaret Higgins Sanger that the public opinion regarding contraception was challenged.[3] She influenced the Connecticut Birth Control League (CBCL), and helped to develop the eventual concept of the Planned Parenthood clinics.

The first Planned Parenthood clinic in Connecticut opened in 1935 in Hartford. It provided services to women who had no access to a gynecologist, information about contraception or other methods to plan the growth of their families. Several clinics were opened in Connecticut over the following years, including the Waterbury clinic that led to the legal dispute. In 1939, this clinic was compelled to enforce the 1879 anti-contraception law towards poor women in the area. This brought the attention of the *CBCL* leaders, who remarked on the importance of birth control for cases in which the lives of the patients depended upon it. Their legal claims succeeded in 1965.[4]

Cases were raised during the 1940s regarding the use and spread of contraception in *Waterbury clinic*, and several legal challenges were made to the constitutionality of the law, which failed on technical grounds. In Tileston v. Ullman (1943), a doctor and mother challenged the statute on the grounds that a ban on contraception could, in certain sexual situations, threaten the lives and well-being of patients. The Supreme Court dismissed the appeal on the grounds that the plaintiff lacked standing to sue on behalf of his patients. A second challenge to the Connecticut law was brought by Yale School of Medicine gynecologist C. Lee Buxton as well as his patients in Poe v. Ullman (1961). The Supreme Court again voted to dismiss the appeal, on the grounds that the case was not *ripe*. It held that, because the plaintiffs had not been charged or threatened with prosecution, there was no actual controversy for the judiciary to resolve.

The polemic around *Poe* led to the appeal in Griswold v. Connecticut, primarily based on Justice John Marshall Harlan II opinion regarding the case, one of the most cited dissenting views in Supreme Court history.

"(T)he 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."[5] - *Justice John Marshal Harlan II, about Poe v. Ullman*

He argued, foremost, that the Supreme Court should have heard the case rather than dismissing it. Thereafter, he indicated his support for a broad interpretation of the due process clause. On the basis of this interpretation, Harlan concluded that the Connecticut statute violated the Constitution.

Shortly after the Poe decision was handed down on June 1961, Estelle Griswold, Executive Director of the Planned Parenthood League of Connecticut,[6] and *Dr. Buxton*,[7] chairman of Yale Medical School's Department of Obstetrics and Gynecology and volunteer medical of PPLC, opened a birth control clinic in New Haven, Connecticut, hoping to test the contraception law once again.[2] The clinic, which opened in November 1, 1961 received its first ten patients and dozens of appointments' requests from married women who wanted advice regarding birth control and prescriptions. Shortly after the clinic was opened, Griswold and Buxton were arrested, tried, found guilty, and fined $100 each.[8] The conviction was upheld by the Appellate Division of the Circuit Court, and by the Connecticut Supreme Court.[9]

Griswold v. Connecticut and the right to privacy

Griswold appealed her conviction to the United States Supreme Court, arguing that the Connecticut statute was in breach of the Fourteenth Amendment to the United States Constitution, which states, "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 any person the equal protection of the laws," (Amendment 14 Section 1).[10] By a 7-2 majority, the Supreme Court concluded that the Connecticut statute was unconstitutional.

Justice William O. Douglas recognized that for the majority, the right to privacy, even when not explicitly included in the Bill of Rights, was to be found in the "penumbras" and "emanations" of other constitutional protections, such as the self-incrimination clause of the Fifth Amendment. The right to privacy is seen as a right to "protect[ion] from governmental intrusion." Justice Arthur Goldberg wrote a concurring opinion in which he used the Ninth Amendment in support of the Supreme Court's ruling. Justice Arthur Goldberg and Justice John Marshall Harlan II wrote concurring opinions in which they argued that privacy is protected by the due process clause of the Fourteenth Amendment. Justice Byron White also wrote a concurring opinion based on the due process clause.

Justices Hugo Black and Potter Stewart filed dissenting opinions. Justice Black argued that the right to privacy is nowhere to be found in the Constitution. Furthermore, he criticized the interpretations of the Ninth and Fourteenth Amendments of his fellow justices. Justice Stewart called the Connecticut statute "an uncommonly silly law" but argued that it was nevertheless constitutional.

The final decision of the court was later used in other cases related to sexual practices and other personal, often considered private, decisions for the American citizens.

Legacy of *Griswold v. Connecticut*

Later decisions by the U.S. Supreme Court extended the principles of *Griswold* beyond its particular facts. *Eisenstadt v. Baird* (1972) extended its holding to unmarried couples, whereas the "right of privacy" in *Griswold* was said to only apply to marital relationships.[11] The argument in *Eisenstadt* was that it was a violation of the Equal Protection Clause of the Fourteenth Amendment to deny unmarried couples the right to use contraception when married couples did have that right (under *Griswold*).[12] Writing for the majority, Justice Brennan wrote that Massachusetts could not enforce the law against married couples because of *Griswold v. Connecticut*, so the law worked "irrational discrimination" if not extended to unmarried couples as well.

The reasoning and language of both *Griswold* and *Eisenstadt* were cited in the concurring opinion by Associate Justice Potter Stewart in support of *Roe v. Wade*, 410 U.S. 113 (1973).[13] The decision in *Roe* struck down a Texas law that criminalized aiding a woman in getting an abortion.[14] The Court ruled that this law was a violation of the Due Process Clause of the Fourteenth Amendment. The law was struck down, legalizing abortion for any woman for any reason, up through the first trimester, with possible restrictions for maternal health in the second (the midpoint of which is the approximate time of fetal viability), and possibly illegal in the third with exception for the mother's health, which the court defined broadly in *Doe v. Bolton*.

Lawrence v. Texas (2003) struck down a Texas state law that prohibited certain forms of intimate sexual contact between members of the same sex. Without stating a standard of review in the majority opinion, the court overruled *Bowers v. Hardwick* (1986), declaring that the "Texas statute furthers no legitimate state interest which can justify its intrusion into the personal and private life of the individual." Justice O'Connor, who wrote a concurring opinion, framed it as an issue of rational basis review. Justice Kennedy's majority opinion, based on the liberty interest protected in the due process clause of the Fourteenth Amendment, stated that the Texas anti-sodomy statute touched "upon the most private human conduct, sexual behavior, and in the most private of places, the home," and attempted to "control a personal relationship that . . . is within the liberty of persons to choose without being punished." Thus, the Court held that adults are entitled to participate in private, consensual sexual conduct. While the opinion in *Lawrence* was framed in terms of the right to liberty, Kennedy described the "right to privacy" found in *Griswold* as the "most pertinent beginning point" in the evolution of the concepts embodied in *Lawrence*.[15] *Griswold* was also cited in a chain of cases that led the Supreme Court to legalize same sex marriage in *Obergefell v. Hodges*.

Several studies have suggested that since 1960s and the changes that *Griswold v. Connecticut* provoked, childbearing in the U.S. has been reduced.[16] A connection to *Griswold*, however, has not been proved since most states already allowed contraception and the 1960s was a profoundly

active period for civil rights, the second wave feminism, which promoted the availability of contraceptives to women of all ages and backgrounds, and the development of the birth control pill. Even when contraceptives were not forbidden before *Griswold,* the information available regarding them was limited, and other contraceptive methods such as the diaphragm were limited to a certain part of the population, often excluding the poor and uneducated.[*citation needed*] Planned Parenthood and Estelle Griswold played a crucial role in the accessibility of contraceptive methods for the people that need it the most.

In an ethical social context, several counter arguments have been raised based on the outcome of these previous cases, ***Roe v. Wade*** (1973) being the most polemic. The right to “privacy”, because of its voluble interpretation, has been subjected to various reviews that question the “morality” of the right.[17]

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