Griswold v. Connecticut (1965)

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I. Facts: Griswold was the director of the Planned Parenthood League of Connecticut. As doctors, Griswold and a co-appellant gave information, instruction and medical advice to married couples seeking contraceptive measures. Interestingly, Griswold was not found guilty under the part of the statute that prohibits taking contraceptive measures, but rather the section that provides, "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".

II. Issues: What is the extent and range of the rights protected under the "Due Process Clause"? How should the Constitution be read, implicitly, explicitly? What is the role of the court in determining "fundamental rights"?

III. Holding: The right of married people to privacy was asserted as under constitutional protection through the Due Process Clause (along with people with whom they enter into professional relationships).

IV. Reasoning, Douglas:

Implied Rights: Peripheral rights, the "penumbras" of established rights, create a zone of privacy guaranteed by the Constitution. The fact that the "association of people" is not is not mentioned in the Constitution, nor the right of a parent's choice over education, does not mean that such rights have not been protected under the First Amendment.

Least Intrusive Means: The manner in which this law achieves its ends is not narrowly tailored. Why not the government regulate the manufacturing of the product, instead of its privacy-intruding use? NAACP v. Alabama has set that the "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". The process of this law is constitutionally dubious because it seeks to achieve its aims in a manner that intrudes upon marital zones of privacy

Goldberg, Joined by Warren, C.J., and Brennan, J., concurring

The Ninth Amendment, Broadly Viewed: While Goldberg argues that the law is intrusive, he does not agree that the "Due Process Clause" of the Fourteenth Amendment incorporates the first eight Amendments (many of the penumbra rights of Douglas' exist in the undefined margins of the First, Fourth, and Fifth Amendments). Goldberg instead bases his implicit claim for the marital right to privacy on the Ninth Amendment. The Ninth amendment provides that liberty is "not restricted to rights specifically mentioned in the first eight amendments".

To use the language of the Ninth Amendment, Goldberg claims that the fundamental rights (the traditions and collective conscience of the people) may not be "denied" or "disparaged" simply because they do not exist in enumerated form. This being so, Connecticut has intruded upon the fundamental right "retained by the people" of marital privacy in the context of the Ninth Amendment.

Harlan

Harlan concurs, offering his previous dissent in Poe as rationale:

Spirit v. the text of the Constitution: "The full scope of 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". While the crime of Griswold did take place out of the traditional realm of marital privacy as understood through the Third and Fourth Amendment that does not mean that due process is limited to the explicit Constitution.

Ethos, Conventional Morality, Does Harlan believe in a popular constitutionalism? Implicit fundamental rights are temporal, determined by the judges' sense of society's collective consciousness. "The balance struck by this country, having regard to what history teaches are traditions from which it developed as well as the traditions from which it broke. That tradition is a living thing"...

Justice White Concurring,

Justice White finds that the statute is too sweeping without a compelling state interest.

V. Dissenting Opinion

Black

Danger of Textual Dissolution: There are certain amendments that specifically protect certain rights to privacy in certain circumstances, but the Fourteenth and Ninth Amendment create no general "right to privacy". While Black finds the statute equally offensive, he finds no constitutional reason to strike it down. Black worries that the abstractions of words like "privacy" may be shrunken just as easily as they are expanded.

Anti-democratic Concern: "Merely using different words to claim for this court and the federal judiciary power to invalidate any legislative act irrational, unreasonable or offensive"... Black has a problem with Goldberg's conception of fundamental rights because there is no way to tap the collective consciousness. Whatever the court's impression on the rights generally agreed upon, it will always be the court's impression.

Limited v. Expansive government: with regard to the Ninth Amendment, "the constitution in all its provisions was intended to limit the Federal Government to the power granted expressly or by necessary implication".

Subjectivity of "Natural Justice", Is the court merely "Lochnering": The court used the Due Process Clause to strike down economic legislation concerning the safety of workers, which was deemed "shocking to the conscience". While protecting marriage and allowing the abuse of workers are different ends, both are dangerous to law because they are reached by the same means: subjective opinion concerning natural right (right to privacy and property under the due process clause). Douglas claims the court is not a superlegislature and that the cases are in fact different.

While marital rights, or "noneconomic rights in general, accord more closely with 'this gerneration's idealization of America': than the rights asserted in Lochner... But that attitude of course is precisely the point of the Lochner philosiphy, which would grant unusual protection to those 'rights' that somewhow *seem* most pressing, regaurdless of whether the Constitution suggests any special solicitude for them".

Stewart:

It is not the court's position to determine community standards, nor decide cases by them.

VI. Significance: The decision of the court extends the protection of the Due Process Clause to rights not explicitly stated. The case is an important first benchmark in determining just where exactly the line is drawn concerning the protection guaranteed by the Due process Clause. Griswold, "changed matters considerably...the courts decision spurred the imagination of lawyers around the country..."