

Griswold v. Connecticut
381 U.S. 479 (1965)

Decision date: 7 June 1965. The facts are contained in the majority opinion below. The Connecticut statute at issue in this case had been challenged twice before but the Court had turned the challenges aside on procedural grounds (most recently in 1961 in Poe v. Ullman, in which Justice Harlan dissented in his desire to decide the case). With the help of some members of the Yale Law School, the state chapter of Planned Parenthood manufactured a test case by violating the statute, which had been on the books but largely unenforced for decades.

Mr. Justice Douglas delivered the opinion of the Court.

Appellant Griswold is Executive Director of the Planned Parenthood League of Connecticut. Appellant Buxton is a licensed physician and a professor at the Yale Medical School who served as Medical Director for the League at its Center in New Haven—a center open and operating from November 1 to November 10, 1961, when appellants were arrested.

They gave information, instruction, and medical advice to married persons as to the means of preventing conception. They examined the wife and prescribed the best contraceptive device or material for her use. Fees were usually charged, although some couples were serviced free.

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:

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.

Section 54-196 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.

The appellants were found guilty as accessories and fined \$100 each, against the claim that the accessory statute, as so applied, violated the Fourteenth Amendment. The Appellate Division of the Circuit Court affirmed. The Supreme Court of Errors affirmed that judgment. . . .

Coming to the merits, we are met with a wide range of questions that implicate the Due Process Clause of the Fourteenth Amendment. Overtones of some arguments suggest that *Lochner v. New York*, 198 U.S. 45 [1905], should be our guide. But we decline that invitation, as we did in *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 [1927] . . . We do not sit as a super-legislature to determine the wisdom, need, and propriety of laws that touch economic problems, business affairs, or social conditions. This law, however, operates directly on an intimate relation of husband and wife and their physician's role in one aspect of that relation.

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*, 268 U.S. 510 [1925], 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*, 262 U.S. 390 [1923], 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 [1943], 143) and freedom of inquiry, freedom of thought, and freedom to teach (see *Wiemann v. Updegraff*, 344 U.S. 183 [1952], 195)—indeed, the freedom of the entire university community. *Sweezy v. New Hampshire*, 354 U.S. 234 [1957], 249-250, 261-263; *Barenblatt v. United States*, 360 U.S. 109 [1959], 112; *Baggett v. Bullitt*, 377 U.S. 360 [1964], 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 [1958], 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.

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 [1963], 430-431. In *Schwartz v. Board of Bar Examiners*, 353 U.S. 232 [1957], 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,” and was not action of a kind proving bad moral character.

Those cases involved more than the “right of assembly”—a right that extends to all, irrespective of their race or ideology. The right of “association,” like the right of belief (*Board of Education v. Barnette*, 319 U.S. 624 [1943]), 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. 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 [1886], 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 [1961], 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.”

We have had many controversies over these penumbral rights of “privacy and repose.” See, e.g., *Breard v. Alexandria*, 341 U.S. 622 [1951], 626, 644; *Public Utilities Comm’n v. Pollak*, 343 U.S. 451 [1952]; *Monroe v. Pape*, 365 U.S. 167 [1961]; *Lanza v. New York*, 370 U.S. 139 [1962]; *Frank v. Maryland*, 359 U.S. 360 [1959]; *Skinner v. Oklahoma*, 316 U.S. 535 [1942], 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 [1964], 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, 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, is supported both by numerous 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. 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. 97 [1934], 105. In *Gitlow v. New York*, 268 U.S. 652 [1925], 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.

And, in *Meyer v. Nebraska*, 262 U.S. 390 [1923], 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. 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 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.

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.

While this Court has had little occasion to interpret the Ninth Amendment, “[i]t cannot be presumed that any clause in the constitution is intended to be without effect.” *Marbury v. Madison*, 1 Cranch 137 [1803], 174. In interpreting the Constitution, “real effect should be given to all the words it uses.” *Myers v. United States*, 272 U.S. 52 [1926], 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.”

A dissenting opinion suggests that my interpretation of the Ninth Amendment somehow “broaden[s] the powers of this Court.” 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 [1947], 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. 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.

Nor am I turning somersaults with history in arguing that the Ninth Amendment is relevant in a case dealing with a State’s infringement of a fundamental right. While the Ninth Amendment—and indeed the entire Bill of Rights—originally concerned restrictions upon

federal power, the subsequently enacted Fourteenth Amendment prohibits the States as well from abridging fundamental personal liberties. And the Ninth Amendment, in indicating that not all such liberties are specifically mentioned in the first eight amendments, is surely relevant in showing the existence of other fundamental personal rights, now protected from state, as well as federal, infringement. In sum, the Ninth Amendment simply lends strong support to the view that the “liberty” protected by the Fifth and Fourteenth Amendments from infringement by the Federal Government or the States is not restricted to rights specifically mentioned in the first eight amendments.

In determining which rights are fundamental, judges are not left at large to decide cases in light of their personal and private notions. Rather, they must look to the “traditions and [collective] conscience of our people” to determine whether a principle is “so rooted [there] . . . as to be ranked as fundamental.” *Snyder v. Massachusetts*, 291 U.S. 97, 105. The inquiry is whether a right involved

is of such a character that it cannot be denied without violating those “fundamental principles of liberty and justice which lie at the base of all our civil and political institutions.” . . .

Powell v. Alabama, 287 U.S. 45 [1932], 67. “Liberty” also “gains content from the emanations of . . . specific [constitutional] guarantees,” and “from experience with the requirements of a free society.” *Poe v. Ullman*, 367 U.S. 497 [1961], 517 (dissenting opinion of Mr. Justice Douglas).

I agree fully with the Court that, applying these tests, the right of privacy is a fundamental personal right, emanating “from the totality of the constitutional scheme under which we live.” Mr. Justice Brandeis, dissenting in *Olmstead v. United States*, 277 U.S. 438 [1928], 478, comprehensively summarized the principles underlying the Constitution’s guarantees of privacy:

The protection guaranteed by the [Fourth and Fifth] Amendments is much broader in scope. The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man’s spiritual nature of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized men.

The Connecticut statutes here involved deal with a particularly important and sensitive area of privacy—that of the marital relation and the marital home. This Court recognized in *Meyer v. Nebraska*, supra, that the right “to marry, establish a home and bring up children” was an essential part of the liberty guaranteed by the Fourteenth Amendment. 262 U.S. at 399. In *Pierce v. Society of Sisters*, 268 U.S. 510, the Court held unconstitutional an Oregon Act which forbade parents from sending their children to private schools because such an act “unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control.” As this Court said in *Prince v. Massachusetts*, 321 U.S. 158, at 166, the *Meyer* and *Pierce* decisions “have respected the private realm of family life which the state cannot enter.”

I agree with Mr. Justice Harlan’s statement in his dissenting opinion in *Poe v. Ullman*, 367 U.S. 497, 551-552:

Certainly the safeguarding of the home does not follow merely from the sanctity of property rights. The home derives its preeminence as the seat of family life. And the integrity of that life is something so fundamental that it has been found to draw to its protection the principles of more than one explicitly granted Constitutional right. . . . Of this whole “private realm of family life,” it is difficult to imagine what is more private or more intimate than a husband and wife’s marital relations.

The entire fabric of the Constitution and the purposes that clearly underlie its specific guarantees demonstrate that the rights to marital privacy and to marry and raise a family are of similar order and magnitude as the fundamental rights specifically protected.

Although the Constitution does not speak in so many words of the right of privacy in marriage, I cannot believe that it offers these fundamental rights no protection. The fact that no particular provision of the Constitution explicitly forbids the State from disrupting the traditional relation of the family—a relation as old and as fundamental as our entire civilization—surely does not show that the Government was meant to have the power to do so. Rather, as the Ninth Amendment expressly recognizes, there are fundamental personal rights such as this one, which are protected from abridgment by the Government, though not specifically mentioned in the Constitution.

My Brother Stewart, while characterizing the Connecticut birth control law as “an uncommonly silly law,” would nevertheless let it stand on the ground that it is not for the courts to “substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws.” Elsewhere, I have stated that,

[w]hile I quite agree with Mr. Justice Brandeis that . . . “a . . . State may . . . serve as a laboratory, and try novel social and economic experiments,” *New State Ice Co. v. Liebmann*, 285 U.S. 262 [1932], 280, 311 (dissenting opinion), I do not believe that this includes the power to experiment with the fundamental liberties of citizens. . . .

The vice of the dissenters’ views is that it would permit such experimentation by the States in the area of the fundamental personal rights of its citizens. I cannot agree that the Constitution grants such power either to the States or to the Federal Government.

The logic of the dissents would sanction federal or state legislation that seems to me even more plainly unconstitutional than the statute before us. Surely the Government, absent a showing of a compelling subordinating state interest, could not decree that all husbands and wives must be sterilized after two children have been born to them. Yet, by their reasoning, such an invasion of marital privacy would not be subject to constitutional challenge, because, while it might be “silly,” no provision of the Constitution specifically prevents the Government from curtailing the marital right to bear children and raise a family. While it may shock some of my Brethren that the Court today holds that the Constitution protects the right of marital privacy, in my view, it is far more shocking to believe that the personal liberty guaranteed by the Constitution does not include protection against such totalitarian limitation of family size, which is at complete variance with our constitutional concepts. Yet if, upon a showing of a slender basis of rationality, a law outlawing voluntary birth control by married persons is valid, then, by the same reasoning, a law requiring compulsory birth control also would seem to be valid. In my view, however, both types of law would unjustifiably intrude upon rights of marital privacy which are constitutionally protected.

In a long series of cases, this Court has held that, where fundamental personal liberties are involved, they may not be abridged by the States simply on a showing that a regulatory statute has some rational relationship to the effectuation of a proper state purpose.

Where there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling, *Bates v. Little Rock*, 361 U.S. 516 [1960], 524. The law must be shown “necessary, and not merely rationally related, to the accomplishment of a permissible state policy.” *McLaughlin v. Florida*, 379 U.S. 184 [1964], 196.

Although the Connecticut birth control law obviously encroaches upon a fundamental personal liberty, the State does not show that the law serves any “subordinating [state] interest which is compelling,” or that it is “necessary . . . to the accomplishment of a permissible state policy.” The State, at most, argues that there is some rational relation between this statute and what is admittedly a legitimate subject of state concern—the discouraging of extramarital relations. It says that preventing the use of birth control devices by married persons helps prevent the indulgence by some in such extramarital relations. The rationality of this justification is dubious, particularly in light of the admitted widespread availability to all persons in the State of Connecticut, unmarried as well as married, of birth control devices for the prevention of disease, as distinguished from the prevention of conception. But, in any event, it is clear that the state interest in safeguarding marital fidelity can be served by a more discriminately tailored statute which does not, like the present one, sweep unnecessarily broadly, reaching far beyond the evil sought to be dealt with and intruding upon the privacy of all married couples. Here, as elsewhere, “[p]recision of regulation must be the touchstone in an area so closely touching our most precious freedoms.” *NAACP v. Button*, 371 U.S. 415, 438. The State of Connecticut does have statutes, the constitutionality of which is beyond doubt, which prohibit adultery and fornication. These statutes demonstrate that means for achieving the same basic purpose of protecting marital fidelity are available to Connecticut without the need to “invade the area of protected freedoms.” *NAACP v. Alabama*, at 307.

Finally, it should be said of the Court’s holding today that it in no way interferes with a State’s proper regulation of sexual promiscuity or misconduct. As my Brother Harlan so well stated in his dissenting opinion in *Poe v. Ullman*:

Adultery, homosexuality and the like are sexual intimacies which the State forbids . . . , but the intimacy of husband and wife is necessarily an essential and accepted feature of the institution of marriage, an institution which the State not only must allow, but which, always and in every age, it has fostered and protected. It is one thing when the State exerts its power either to forbid extramarital sexuality . . . or to say who may marry, but it is quite another when, having acknowledged a marriage and the intimacies inherent in it, it undertakes to regulate by means of the criminal law the details of that intimacy.

In sum, I believe that the right of privacy in the marital relation is fundamental and basic—a personal right “retained by the people” within the meaning of the Ninth Amendment. Connecticut cannot constitutionally abridge this fundamental right, which is protected by the Fourteenth Amendment from infringement by the States. I agree with the Court that petitioners’ convictions must therefore be reversed.

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 [1965], 408, and *Griffin v. California*, 380 U.S. 609 [1965], 615, and my dissenting opinion in *Poe v. Ullman*, 367 U.S. 497 [1961], 522, at pp. 539-545.

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 [1937], 325. For reasons stated at length in my dissenting opinion in *Poe v. Ullman*, 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 White, concurring in the judgment.

In my view, this Connecticut law, as applied to married couples, deprives them of "liberty" without due process of law, as that concept is used in the Fourteenth Amendment. I therefore concur in the judgment of the Court reversing these convictions under Connecticut's aiding and abetting statute. . . .

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. . . .

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 shrunk 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. . . . 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. 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.

This brings me to the arguments made by my Brothers Harlan, White and Goldberg for invalidating the Connecticut law. Brothers Harlan and White would invalidate it by reliance on the Due Process Clause of the Fourteenth Amendment, but Brother Goldberg, while agreeing with Brother Harlan, relies also on the Ninth Amendment. I have no doubt that the Connecticut law could be applied in such a way as to abridge freedom of speech and press, and therefore violate the First and Fourteenth Amendments. My disagreement with the Court’s opinion holding that there is such a violation here is a narrow one, relating to the application of the First Amendment to the facts and circumstances of this particular case. But my disagreement with Brothers Harlan, White and Goldberg is more basic. I think that, if properly construed, neither the Due Process Clause nor the Ninth Amendment, nor both together, could under any circumstances be a proper basis for invalidating the Connecticut law. I discuss the due process and Ninth Amendment arguments together because, on analysis, they turn out to be the same thing—merely using different words to claim for this Court and the federal judiciary power to invalidate any legislative act which the judges find irrational, unreasonable or offensive. . . .

I repeat, so as not to be misunderstood, that this Court does have power, which it should exercise, to hold laws unconstitutional where they are forbidden by the Federal Constitution. My point is that there is no provision of the Constitution which either expressly or impliedly vests power in this Court to sit as a supervisory agency over acts of duly constituted legislative bodies and set aside their laws because of the Court’s belief that the legislative policies adopted are unreasonable, unwise, arbitrary, capricious or irrational. The adoption of such a loose flexible uncontrolled standard for holding laws unconstitutional, if ever it is finally achieved, will amount to a great unconstitutional shift of power to the courts which I believe and am constrained to say will be bad for the courts, and worse for the country. Subjecting federal and state laws to such an unrestrained and unrestrainable judicial control as to the wisdom of legislative enactments would, I fear, jeopardize the separation of governmental powers that the Framers set up, and, at the same time, threaten to take away much of the power of States to govern themselves which the Constitution plainly intended them to have.

I realize that many good and able men have eloquently spoken and written, sometimes in rhapsodical strains, about the duty of this Court to keep the Constitution in tune with the times. The idea is that the Constitution must be changed from time to time, and that this Court is charged with a duty to make those changes. For myself, I must, with all deference, reject that philosophy. The Constitution makers knew the need for change, and provided for it. Amendments suggested by the people’s elected representatives can be submitted to the people or their selected agents for ratification. That method of change was good for our Fathers, and,

being somewhat old-fashioned, I must add it is good enough for me. And so I cannot rely on the Due Process Clause or the Ninth Amendment or any mysterious and uncertain natural law concept as a reason for striking down this state law. The Due Process Clause, with an “arbitrary and capricious” or “shocking to the conscience” formula, was liberally used by this Court to strike down economic legislation in the early decades of this century, threatening, many people thought, the tranquility and stability of the Nation. See, e.g., *Lochner v. New York*, 198 U.S. 45 [1905]. That formula, based on subjective considerations of “natural justice,” is no less dangerous when used to enforce this Court’s views about personal rights than those about economic rights. I had thought that we had laid that formula, as a means for striking down state legislation, to rest once and for all in cases like *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 [1937]; *Olsen v. Nebraska ex rel. Western Reference & Bond Assn.*, 313 U.S. 236 [1941], and many other opinions. See also *Lochner v. New York*, 198 U.S. 45, 74 (Holmes, J., dissenting). . .

So far as I am concerned, Connecticut’s law, as applied here, is not forbidden by any provision of the Federal Constitution as that Constitution was written, and I would therefore affirm.

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 [1905], with *Ferguson v. Skrupa*, 372 U.S. 726 [1963]. 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, at 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. It has not even been argued that this is a law “respecting an establishment of religion, or prohibiting the free exercise thereof.” 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.

No soldier has been quartered in any house. There has been no search, and no seizure. Nobody has been compelled to be a witness against himself.

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 [1941], 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.

At the oral argument in this case, we were told that the Connecticut law does not “conform to current community standards.” But it is not the function of this Court to decide cases on the basis of community standards. We are here to decide cases “agreeably to the Constitution and laws of the United States.” It is the essence of judicial duty to subordinate our own personal views, our own ideas of what legislation is wise and what is not. If, as I should surely hope, the law before us does not reflect the standards of the people of Connecticut, the people of Connecticut can freely exercise their true Ninth and Tenth Amendment rights to persuade their elected representatives to repeal it. That is the constitutional way to take this law off the books.