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# human**rights hero**

## The Legal Legacy of *Griswold v. Connecticut*

### By David J. Garrow

Estelle Griswold triumphed where many before her had failed. Because of her courage—and that of Dr. C. Lee Buxton, her Planned Parenthood colleague—to willingly accept arrest and face criminal prosecution, Griswold succeeded in forcing the U.S. Supreme Court to decide the substantive constitutional merits of a fundamental rights claim it long had ducked.

Nowadays, contraception—or, fifty years ago, "birth control"—may be a largely ho-hum topic, but as of 1961, several states still actively enforced nineteenth-century criminal statutes prohibiting the sale or, in Connecticut's case, even the *use* of contraceptives. Only in 1965, in *Griswold v. Connecticut* (381 U.S. 479), was such a ban finally held unconstitutional—at least as applied to married couples.

Griswold was an unlikely heroine for the constitutional protection of contraceptive choice. Born into a Roman Catholic family, she deeply regretted her own inability to have children, and when she and her husband returned to their home state of Connecticut in the early 1950s following peripatetic travels during and after World War II, Planned Parenthood's cause held no natural attraction. But Griswold enjoyed a challenge and needed a job. Connecticut Planned Parenthood offered both, for the organization had never recovered the dynamism which its founding spirit, Katharine Hepburn—mother of the famous actress—had infused into the group in the years before a 1938 police raid on a Waterbury, Connecticut, birth control clinic resulted in criminal charges against three medical professionals and brought patient services to a complete halt.

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Estelle Griswold, executive director of the Planned Parenthood League, standing outside the center in April, 1963, which was closed pending decision of the U.S. Supreme Court regarding Connecticut state law forbidding sale or use of contraceptives.

HIV potentially pits the sexual autonomy and privacy rights of the positive person against the health of a discordant partner who does not know his or her partner's status. Aziza Ahmed and activist Beri Hull explore the ways in which the legal system addresses—and fails adequately to address—the web of issues surrounding HIV-status disclosure.

Other articles in this issue address how we as a society regulate discussions about sexuality. Patrick Malone and Monica Rodriguez tackle the thorny topic of sexuality education, and the extent to which abstinence-only education is based more on notions of morality than on proven effectiveness in reducing teenage pregnancy or the transmission of sexually-transmitted infections.

But the legal and political quandaries don't end with discussions of sexuality with children. Instead, the Internet age has opened up a tremendous Pandora's box of legal questions. What are "community standards" in the twenty-first century, and is the entire concept outdated? What is "possession" in an age of streaming video and Internet-browser caches? Clay Calvert explores these issues and more in his article.

Americans' particular squeamishness about sexuality doesn't just affect American citizens. Indeed, as Heather Doyle explains, we are busy exporting some of our Puritan beliefs by forcing aid organizations to sign a pledge vying to oppose prostitution—even as these same groups are supposed to be doing HIV/AIDS-related work with commercial sex workers—a population that is especially vulnerable to the disease.

And finally, David J. Garrow looks back and salutes Estelle Griswold, and her colleague Dr. C. Lee Buxton, whose courage forced the Supreme Court to confront the question of whether states can prohibit the sale or use of contraception. Griswold and Buxton would no doubt be elated to hear of the recent news that the Department of Health and Human Services will adopt the recent Institute of Medicine panel's recommendation and require insurance plans to offer no-copay contraception to women.

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Connecticut state courts upheld the criminal ban, as they did again in two successive mid-1940s and late 1950s lawsuits—*Tileston v. Ullman* (318 U.S. 44) and *Poe v. Ullman* (367 U.S. 497)—in which the U.S. Supreme Court cited lack of standing—no actual charges were at issue—in refusing to reach the merits. The *Poe* affirmance, handed down in June 1961, led Griswold to immediately resolve to open the first birth control clinic in Connecticut since the Waterbury arrests. Preparations began quickly, and on November 1, she and Buxton—chairman of Yale Medical School's Department of Obstetrics and Gynecology as well as Connecticut Planned Parenthood's volunteer medical director—welcomed the first ten patients at the new clinic. Less than forty-eight hours later, two New Haven police detectives walked through the door and introduced themselves to Griswold.

Griswold was ecstatic at the officers' arrival, and she showered them with information on the clinic's procedures, plus her explicit acknowledgment that they, of course, violated the state law. Buxton arrived and affirmed Griswold's admissions, and a week later the two detectives returned with arrest warrants for Griswold and Buxton. Both were found guilty following a one-day bench trial, and their convictions were affirmed first by an appellate court and then by the Connecticut Supreme Court.

Griswold and Buxton welcomed these outcomes, knowing that only criminal appellants could force the U.S. Supreme Court to address the constitutional merits of Connecticut's law. On June 7, 1965, a 7–2 vote held state criminalization of contraceptive use—at least by married couples—unconstitutional. Griswold's name may have receded into the historical shadows in the years since her death in 1981, but her legal legacy, *Griswold v. Connecticut*, remains a constitutional precedent whose enshrinement of sexual privacy is known to millions.

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