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# Griswold v. Connecticut: A Study of Resistance to Sexual Revolution in Connecticut, 1961

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*GRISWOLD v. CONNECTICUT: A STUDY OF RESISTANCE TO SEXUAL REVOLUTION  
IN CONNECTICUT, 1961*

The *Griswold v. Connecticut* Supreme Court case of 1965 is cited as one of the most important and defining Supreme Court cases in United States history. The case has attracted much attention over the past fifty-some years because of the monumental decision, in which Justice William O. Douglas established a Constitutional right to privacy. While the outcome of the case is usually the focal point of discussion about *Griswold v. Connecticut* now, there is much more social significance in the history of the law that existed at the center of the case, the conflict between Connecticut citizens and lawmakers, and the sexual revolution which occurred beginning in the 1950s and completely redefined social policy regarding contraception.

The stage for *Griswold* was set by Connecticut's unique history and the religious foundation of New England states. While some North American colonies were founded for economic reasons—like Virginia, whose basis in the Virginia Company as a joint stock company led to a market-oriented culture—the New England colonies were formed primarily for religious reasons. The growth of Protestantism in Europe in the 16<sup>th</sup> Century fueled conflict between Protestants and Catholics. While Catholic control had been lost after Henry VIII created the Church of England, Catholics came back into power just prior to English colonization of the North American continent. As Catholics regained control, the many Protestants in Britain began

to face what they believed was great discrimination. Overwhelmed by what appeared to be a largely anti-Protestant nation, they saw the new colonization of America as a way to escape Catholic control and create a new society which would serve as a utopian model for the rest of the world. The majority of these religiously-motivated colonists settled in the New England area, leaving the north-eastern tip of what is now the United States isolated in its religious focus.

This region's history was greatly influenced by Puritan minister Thomas Hooker. "Like others of the founding generation, he arrived with great hopes. New England represented a fresh start after years of struggle and persecution in England."<sup>1</sup> "The Great Migration [of Puritans to America], which began in 1630 and ended in 1642, was rooted in the belief that the reformation had stalled and that the only hope of salvaging it was by transporting Puritanism across the ocean to the American wilderness."<sup>2</sup> In England, Puritans were forced to answer to claims that they were deviants, wishing to destroy the stability of the Church of England. Most well-known Puritan ministers were killed or imprisoned. They were left with the choice of staying in England and continuing to bear this persecution or joining the Massachusetts Bay Company to start a new life in America. "Some twenty-one thousand Puritans chose America, following the lead of John Winthrop, a wealthy Puritan landowner from Suffolk."<sup>3</sup>

Even within New England, Connecticut was a uniquely religious colony. New England as a whole, despite being home to hordes of British citizens who had completely restarted their lives for the sake of escaping religious persecution, still fostered some individuals who felt religiously threatened. "Within three short years of his arrival in Massachusetts, [Thomas]

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<sup>1</sup>S. Scott Rohrer, *Wandering Souls: Protestant Migrations in American, 1630-1865* (Chapel Hill: The University of North Carolina Press, 2010), 15.

<sup>2</sup> *Ibid.*, 21.

<sup>3</sup> *Ibid.*, 22-24.

Hooker... led a migration of some 160 people from the Massachusetts Bay to found a frontier village that became Hartford, Connecticut... Hooker, who denounced as dangerous the ideas of Roger Williams and Anne Hutchinson, was in many ways a defender of the Puritan orthodoxy.”<sup>4</sup> The individuals who left with Hooker, most of them colonists who had been living in the Massachusetts Bay colony, formed the new colony of Connecticut in March of 1636. Connecticut was to be a haven for Puritans who believed religious development in Massachusetts was unacceptable and deviated too much from their traditional Protestantism. In this way, Connecticut was set apart even from its highly religious neighboring colonies.

Centuries after its colonization, New England life and politics remained religiously oriented. This was evident in a trend in New England reactions to various revolutions. Between 1791 and 1850, for example, was the “Age of Democratic Revolution,” an era which “altered forever the terms upon which governments governed and the ways in which religious institutions shaped the morals and spiritual beliefs of the societies that surrounded them.”<sup>5</sup> During this challenge to the religious foundations of New England, many inhabitants of Vermont became skeptical of their society’s future and as a result, there was a period of hyper-religiosity, an overcompensation for the threat many Protestants and Calvinists perceived from the political revolution. “The rate at which members joined Congregational and Baptist churches increased fourfold between 1810 and 1828.”<sup>6</sup>

Unlike in other places throughout the country, New England states reacted in a very clear manner to what was perceived to be a threat to an ingrained way of life. Even those townspeople

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<sup>4</sup>Rohrer, 16.

<sup>5</sup> Randolph A. Roth, *The Democratic Dilemma: Religion, Reform, and the Social Order in the Connecticut River Valley of Vermont, 1791-1850* (New York: Cambridge University Press, 1987), 1.

<sup>6</sup> *Ibid.*, 80-81.

who had not had church affiliation prior to the beginning of the democratic revolution were moved to support the churches in their area. It speaks to how ingrained religiosity was in New England states—specifically Vermont—that a political movement could have such an effect. Further, the church’s enthusiasm and self-given authority in correcting what they saw as the development of amoral behavior and beliefs was never questioned. “No one spoke of networks of support among church members [though they were extensive]. Nor did anyone question the right of Christians to pressure others into supporting what the churchgoing community wanted.”<sup>7</sup>

It was during this revolution that the Connecticut General Statute 53-32 became a controversy. The law was created in 1879, banning the use of any type of contraceptive, even privately between married couples. The law was extended to the distribution of contraceptives and information on the topic through Connecticut General Statute 54-196.

At the time of its genesis, the Connecticut Statute was both accepted and called for as a moral measure, seeing as the Congressional Comstock Law (passed March 2, 1873) defined contraceptives as obscene material.”<sup>8</sup> The Comstock Law was a response to a social movement throughout the nation against sexual obscenity, and contraception, in particular, became a target. During this time, most states created anticontraceptive laws which lasted for quite some time. In the early 1950s, thirty states still had laws outlawing the distribution, use, or advertisement of contraception.<sup>9</sup> However, during that decade, things began to change.

The “post-war ‘baby boom’ of the 1950s allowed activists for birth control and abortion, like Margaret Sanger, to gain popularity. In 1957, the first oral contraceptive became available to

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<sup>7</sup> Roth, 94.

<sup>8</sup> “American Experience: The Pill” [article on-line]. *Public Broadcasting Service* (accessed 14 April 2013); available from <http://www.pbs.org/wgbh/amex/pill/timeline/index.html>; Internet.

<sup>9</sup> *Ibid.*

the public, and Sanger's previous thirty years of campaigning began to affect public opinion favorably. The growing availability of information about birth control, as well as the introduction of a contraceptive as simple as the pill, were vital to the sexual revolution.<sup>10</sup> Even as early as the 1950s, "Americans [spent] an estimated \$200 million a year on contraceptives... the vast majority of doctors approve[d] of birth control for the good of families."

It was with this background that the New England states faced the 1960s and, with them, a new era of revolution to the United States; the '60s saw dramatic changes in popular American philosophies surrounding drugs, music, politics, and war, but perhaps most defined was the revolution in sexual culture. The 1960s introduced a "Kinseyan" view of sex; originated by "sexologist" Dr. Alfred Kinsey, this view asserted that sex was simple physical contact resulting from a need that must be fulfilled, with or without emotional or moral significance. Though this view was only one part of the changing culture, it represented a complete shift in popular American beliefs at the time.

In accordance with this changing public attitude, nearly every anticontraceptive law on the books had been repealed by the end of the decade. This is where Connecticut Statute 53-32 became unique. The ideological revolution regarding contraceptives was so widespread that, by 1960, the Connecticut statute was the last anti-contraceptive law in the country.

Attempts to repeal Statute 53-32 actually began in 1940 when two doctors and a nurse, charged for advising a woman to use contraception, challenged the law constitutionally. Their

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<sup>10</sup> Smith, Patrick S., "John Gideon Searle" [article on-line], in *Scribner Encyclopedia of American Lives, Thematic Series: Sports Figures*, ed. Arnold Markoe and Kenneth T. Jackson (New York: Charles Scribner's Sons, 2003, accessed 20 February 2013); available from [http://ic.galegroup.com/ic/uhic/ReferenceDetailsPage/ReferenceDetailsWindow?query=&prodId=UHC&displayGroupName=Reference&limiter=&source=&disableHighlighting=false&displayGroups=&sortBy=&search\\_within\\_results=&action=2&catId=&activityType=&documentId=GALE%7CK3436600547&userGroupName=lakeoswego&jsid=e7a91ecf99f25d11670c95e93d94cdcc](http://ic.galegroup.com/ic/uhic/ReferenceDetailsPage/ReferenceDetailsWindow?query=&prodId=UHC&displayGroupName=Reference&limiter=&source=&disableHighlighting=false&displayGroups=&sortBy=&search_within_results=&action=2&catId=&activityType=&documentId=GALE%7CK3436600547&userGroupName=lakeoswego&jsid=e7a91ecf99f25d11670c95e93d94cdcc); Internet.

argument was accepted by a lower court, but the Supreme Court of Errors rejected it and upheld the statute with the amendment that the law was modified to allow the distribution of information about contraception in cases in which a lack of contraception would be a danger to a woman's health.<sup>11</sup>

In addition, there were often protests at the state capital in Hartford requesting the end of the statute.<sup>12</sup> However, these protests were often simply ignored. The law had not been used to prosecute couples' private use of contraceptives for years, since evidence would have been nearly impossible to attain; however, lawmakers refused to take the statute off the books.

Meanwhile—besides making outlaws out of a vast number of Connecticut citizens—the law was harmful to clinics that wished to distribute contraceptives. Family planning services were often prosecuted, but were never able to successfully challenge the statute in court.<sup>13</sup>

That changed in 1961 when opponents to the statute—including Estelle Griswold and Yale professor Dr. C. Lee Buxton—opened a Planned Parenthood clinic for which Griswold acted as director. The clinic being successful as legal bait, Griswold and Buxton were soon tried and convicted under the statute for distributing contraceptives and information about contraception.<sup>14</sup>

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<sup>11</sup> *Ibid.*

<sup>12</sup> For more information on previous constitutional challenges to the Connecticut Statute, see also “Connecticut’s Birth Control Law: Reviewing a State Statute under the Fourteenth Amendment,” *The Yale Law Journal*, 70:2 (December, 1960), 323.

<sup>13</sup> Abramson and others, 46.

<sup>14</sup> Tushnet, 186-187.

The resulting Supreme Court decision earned *Griswold* its fame with a ruling against the Connecticut law by a majority of seven to two.<sup>15</sup> Justice William O. Douglas's decision established a constitutional right to privacy. Douglas held that, though privacy was not a right explicitly stated in the Constitution or Bill of Rights, it was one that had been implied by numerous previous cases and was so deeply ingrained in the morale and spirit of the Constitution that it could not be ignored. It was about this claimed constitutional right to privacy that the justices really argued. Dissenting justices Hugo Black and Justice Potter Stewart's wrote a joint dissent irrelevant to the issue of contraception; it was it a remark of social conservatism, but a cry of resistance against a changing view of the Constitution. The dissenting justices did not support Connecticut's law itself, but expressed a separation between the value of the law and the constitutionality of it. This brings up an important point. Even dissenting judges in *Griswold* were unconcerned with the actual subject of the Connecticut statute, which seems to speak to how accepted contraceptive use had become by the time *Griswold* and *Buxton* were prosecuted.<sup>16</sup> Despite this widespread acceptance of contraceptive use, however, Connecticut lawmakers held fast to their 1879 statute. They seemed to be consciously fighting the sexual revolution, especially when one looks at how determined lawmakers must have been to disregard and ignore the numerous protests and previous legal challenges to the statute.

In order to explain Connecticut's unique resistance to sexual revolution, historians have to understand the source and continuing importance of the law. The law could have one of three

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<sup>15</sup> Kermit L. Hall and John J. Patrick, *The Pursuit of Justice: Supreme Court Decisions that Shaped America* (New York: Oxford University Press, Inc., 2006).

<sup>16</sup> Noting that, evidently, the demographic of older white men who sat on the Supreme Court in 1965 tend not to lean very liberally towards questions regarding sex. Our country's recent history has shown this to be especially true of the so-called "women's issue" of access to oral contraceptives. In 1965, the Supreme Court consisted of Justices Douglass, Warren, Black, Brennan, Goldberg, White, Clark, Stewart, and Harlan, all of whom were white men over the age of 50 at the time of the *Griswold* decision.



purposes: a public health measure, a means of enforcing population growth, or a religious standard. However, analysis proves that the law could only have been maintained for religious reasons.

First, the statute could not have been accepted as a public health statute. If Connecticut legislators believed contraceptives to be harmful to women's health, they would have been justified in maintaining the law. However, the Supreme Court had in previous cases set a standard for what constituted a reasonable fear of danger to public health, and "Since the medical profession is virtually unanimous in considering the use of contraceptives an effective method of medical treatment which is in no way adverse to health, the Connecticut anticontraceptive law, as a public health measure, would probably be struck down."<sup>17</sup> The second justification was equally invalid. If a community were suffering, in some way, because of an insufficient population, the law may have been created and upheld in order to increase conception and therefore population. However, the decades in which the law was challenged were ones in which steeply increasing population posed a concern throughout the United States, and Connecticut citizens were certainly not exempt from this fear. If anything, during this time period, the Connecticut legislature—if concerned with population and the "welfare of its citizens"—would have quickly changed its stance on contraception in order to address what many referred to as the population explosion.<sup>18</sup>

This leaves religion as the only explanation for the law's maintenance: it was an attempt to enforce the Connecticut legislature's morals upon the Connecticut population. While the secular world had no objections to the use of contraception or the behavior some claimed

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<sup>17</sup>*Ibid.*

<sup>18</sup> "Connecticut's Birth Control Law: Reviewing a State Statute under the Fourteenth Amendment," 330-331.

contraceptive use would encourage, the religious world did. The law was undeniably one of religious preservation at its start and remained so until its federal overturning.

This legal interpretation of sexual morality was explained by Connecticut's religious foundation. The sexual revolution of the 1960s caused much the same reaction in Connecticut as the Democratic Revolution did in Vermont over a century earlier. In the face of new public opinions that clearly did not fit Protestant values, the state followed the pattern established both in its neighboring states of religious background and in its own history as a utopia for Protestantism. Historically, the will of the religious population of Connecticut carried overwhelming power; time and time again, when an ideological revolution threatened their traditional values, the state reacted by holding on to those values with even more strength.

More than any other state in the nation, Connecticut's culture was one based on Protestants wishing to protect their values from the threats of a changing society. The state's concern has remained with the preservation of morality than with the voices of nonreligious individuals. It is for this reason that Connecticut lawmakers—the people whom Connecticut citizens chose to lead their government based on their expectations for the culture of their state—chose individuals who would be likely to uphold laws like the Connecticut Statute 53-32, despite the political fallout that ensued.

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