

Constitutional Interpretation & *Griswold*

PHIL 102
Ethics, Politics, & Law
Spring 2008

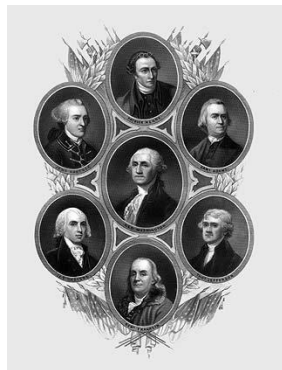
Communication

- Words & meaning
- What do you mean?
 - Conversation
 - Text message
 - Literary work
 - Legal document
 - Constitution
- Plain meaning
- Original intent
- Constructivism



Constitutional History

- History & meaning
- Revolutionary War
- Constitution
- Bill of Rights
- Civil War
- Fourteenth Amendment



Griswold v. Connecticut

- Connecticut law
- Earlier cases
- Privacy
 - Privacy & education
 - Marital privacy
 - Individual privacy
- Right to privacy?
 - Moral
 - Constitutional



Penumbra of the Bill of Rights

- William O. Douglas
- No explicit mention of privacy
- No explicit mention of other rights
- *Pierce v. Society of Sisters*
- *Meyer v. Nebraska*



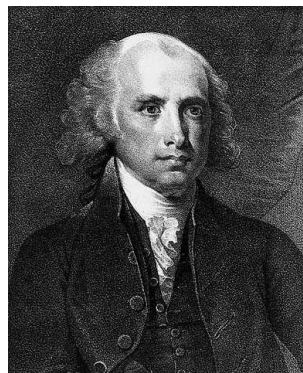
Penumbra of the Bill of Rights

- Privacy in the 1st Amendment
- Privacy in the 3rd Amendment
- Privacy in the 4th Amendment
- Privacy in the 5th Amendment
- Privacy in the 9th Amendment
- “Spirit of the document”



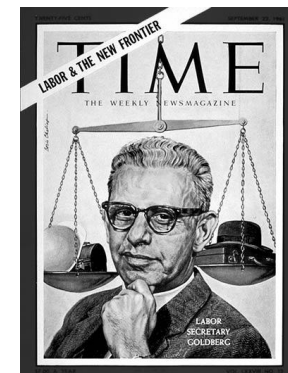
Ninth Amendment

- Federalists’ argument James Madison
- 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 against the admission of a bill of rights into this system; but, I conceive, that it may be guarded against.
- Ninth Amendment



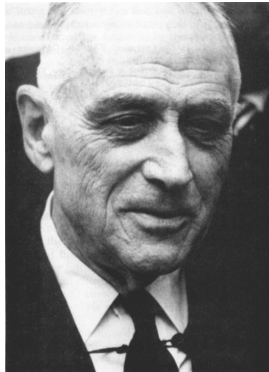
Ninth Amendment Privacy

- Arthur Goldberg
- Douglas’s penumbra argument
- Due Process argument
- Fundamental rights
- History and language of the Ninth Amendment
- Writing to emphasize its centrality



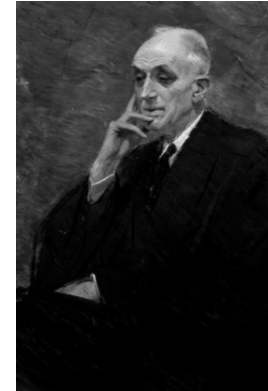
Fourteenth Amendment Privacy

- **John Marshall Harlan**
- **Incorporation**
 - Before 14th Amendment
 - Incorporation and the Bill of Rights
 - Cuts both ways
- **Procedural Due Process**
- **Substantive Due Process**



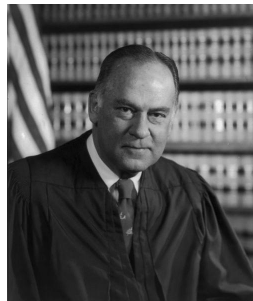
From *Poe v. Ullman*

it is not the particular enumeration of rights in the first eight Amendments which spells out the reach of Fourteenth Amendment due process, but rather, as was suggested in another context long before the adoption of that Amendment, those concepts which are considered to embrace those rights "which are . . . fundamental which belong . . . to the citizens of all free governments," . . . for "the purposes (of securing) which men enter into society,"



Stewart's Dissent

- **Uncommonly silly**
 - Unenforceable
 - Personally wrong
 - Bad policy
- **Appeal to democracy**
- **Appeal to six Amendments**
- **Madison and the Ninth Amendment**
- **No general right to privacy**



Black's Dissent

- **Substantive Due Process**
- **1st Amendment**
 - Expression of ideas
 - Conduct
- **4th Amendment**
 - Searches and seizures
 - Expanded right to privacy
- 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.

