

Plenary Session: Reproductive Rights

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While the passage of time has revealed aspects of *Griswold v. Connecticut* that were not apparent to the Justices half a century ago (most notably, its implications for sex equality), it has also obscured constitutional frames that were more visible in the 1960s than they are today. My new project focuses on one such frame: that of poverty, or social and economic disadvantage. When *Griswold* was decided, it was part of a series of Warren Court decisions that suggested the Constitution, properly understood, was concerned with certain forms of material deprivation and economic injustice. Justice White gave voice to this concern when he wrote that the “clear effect” of the state’s anti-contraceptive statutes was “to deny disadvantaged citizens of Connecticut, those without either adequate knowledge or resources to obtain private counseling, access to medical assistance and up-to-date information in respect to proper methods of birth control.” It was not only Justice White who noticed this aspect of the case: The fact that the Connecticut law shut down a public clinic was central to the Court’s decision.

At first glance, it might seem ironic that the decision that gave rise to contemporary *privacy* doctrine served primarily to safeguard *public* access to birth control. But perhaps it is not so ironic. Privacy has never entailed merely the right to be left alone. This is particularly true of the kind of decisional autonomy the Court protected in *Griswold*. Such autonomy often depends, as it did in that case, on an infrastructure of provision. I intend to talk about the implications of this forgotten aspect of *Griswold* for controversies in reproductive rights law today.