

Amanda Seibald

Bowers v. Hardwick—Right to Privacy

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On June 30th, 1986, the case of *Bowers v. Hardwick* was decided. Noted as one of the more controversial cases of its time it raised an endless list of questions regarding homosexuality. More importantly, however, were the questions brought up about how and where homosexual acts should be conducted. The arguments revolved mainly around moral and religious values yet both the majority and the dissent touched upon the issue of privacy. It was here, on the subject of privacy, that the opinions of the majority and the dissent took diverging paths.

Altogether, the majority feels that homosexual sodomy is immoral, unacceptable, and against the Bible. In addition, it argues that this specific incident falls into the category of privacy that can indeed be reached by the government. Originally, it was decided that Georgia law violated Hardwick's fundamental rights because homosexuality is a private behavior that is out of the hands of state regulation. Soon after, the Attorney General's petition was conferred for questioning the decision and eventually it was overturned. In the opening opinion of the Court, Justice White stated that even though the incident occurred in the privacy of Hardwick's home, that fact would not affect the result of this case. This was previously declared in the renowned 1969 case, *Stanley v. Georgia*, in which Stanley was excused from reading obscene material in the privacy of his own home, simply because it was done in his own home. Other famous cases that were debated on the issue of privacy include *Roe v. Wade*, in which abortion was the central issue, *Pierce v. Society of Sisters*, dealing with education and child rearing, and

Loving v. Virginia, regarding [interracial] marriage. All of the abovementioned cases were all decided favoring the Fourteenth Amendment. However, the majority did not feel that any of these cases resembled Bowers v. Hardwick nor did they claim any constitutional right to engage in homosexual sodomy. For this reason, the majority claimed that homosexual sodomy should and could be regulated by the government.

On the other hand, the opposition clearly felt otherwise. Although they agreed with the majority that the matter at hand was indeed a privacy issue, the dissent claimed that this incident is completely out of the state's control. According to Justices Blackmun, Brennan, Marshall, and Stevens, the Georgia statute denies the respondent the right to choose what kind of sexual activity to engage in, if any at all. Together, the dissent also decided that Bowers' case was more about the invasion of privacy and "right of intimate association." The dissent also stated that the Constitution guarantees that a certain area of individual liberty will be kept beyond the government's reach. Entwined in this argument is the distinction between the facets of privacy: decisional and spatial. Decisional privacy refers to the right to make decisions that are appropriate for the individual to make for himself. An example of another case in which decisional privacy was protected was Roe v. Wade, in which the right to choose to have an abortion was argued. Spatial privacy, however, refers to the location at which the individual's actions occur. It is here, on the issue of spatial privacy, that the majority and the dissent strongly disagree. The case of Bowers v. Hardwick involves both aspects of privacy; favoring the majority opinion would require the Court to go against the Constitution in not only one way, but now two. According to the dissent, the fact that the incident of homosexual

sodomy took place in the privacy of Hardwick's own home should have a major impact on the decision of the case.

Evidently, *Bowers v. Hardwick* is one of the more controversial cases of its time and paved the way to modern times. The issue of privacy was divided in two by the majority and the dissent. This case challenges the extent to which the Constitution can be interpreted and applied in different societal situations. In this instance, the debate is about privacy and its several aspects. Should the location of the occurrence have an effect of the outcome of this case? Or will it violate too many rights already granted by the Constitution? In *Bowers v. Hardwick*, the haziness and elasticity of the law is demonstrated. It is a perfect example of how different people react to different, and new, controversial situations.