



The Sodomy Cases: Bowers V. Hardwick and Lawrence V. Texas (Landmark Law Cases & American Society)

David A. J. Richards

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For America's gay community, the question of rights is often reduced to the issue of privacy. Until very recently, even though this right has been upheld by the Supreme Court in landmark cases relating to contraception and abortion, the issue of 'non procreational sex' continued to trigger a double standard for gay men. Now David Richards, a leading legal scholar who is himself gay, shows how two other landmark cases nearly twenty years apart shed light on America's evolving views of privacy. The Supreme Court's decision in *Bowers v. Hardwick* (1986) stemmed from a 1982 gay-sex arrest in an Atlanta home under a Georgia law that criminalized sodomy - a case not originally prosecuted, but then pursued in court to challenge the statute's constitutionality. *Lawrence v. Texas* (2003) followed a similar arrest in 1998 in Houston, where Texas law also criminalized sodomy - but only when practiced by members of the same sex. Richards views these cases as the nadir and apogee of the gay community's efforts to fight discrimination through the courts. In *Bowers*, the Supreme Court ruled that there was no constitutional protection for sodomy and that states could outlaw those practices. But in *Lawrence*, the Court overturned the Texas law - and the *Bowers* decision as well - because it denied due process protection to consenting adults whose sexual practices were conducted in private. Justice Kennedy's majority opinion reaffirmed a constitutionally protected right to privacy that prevented the government from regulating intimate behavior. Tracing the Court's deliberations, Richards shows how *Lawrence* unambiguously establishes that the right to a private life is an innately human right and that our constitutional right to privacy rests on the moral bedrock of equal protection. He shifts gracefully from the law to literature, and from the Courts to the wider culture, to offer a brilliant analysis of the relevant arguments, going beneath their surface to link them to the emotional and moral foundations of the controversies raging around these decisions. Both of these cases show a Supreme Court ready to take seriously the idea that homosexuals have human rights - and that these rights are the basis of judicially enforceable constitutional rights. In describing these challenges to public prejudice, Richards' book offers students and general readers new insight into the practice and theory of constitutional law.

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