

Compare & Contrast Essay Example

Bowers v. Hardwick Case VS Lawrence v. Texas Case

Introduction

The two Supreme Court decisions, which were separated by seventeen years, represent two of the significant Supreme Court rulings regarding constitutional liberty for gay men and lesbians. It took over sixteen years for the first decision in the case of Bowers v. Hardwick to have been reversed, thus, questioning the doctrine of stare decisis in the case of Lawrence v. Texas. There have been sixteen years of galvanized gay rights movements, which seemed to receive a new lease of life after that decision. The two cases, sharing similar facts and pursuing similar legal principals under the highest court in the land, have very opposing rulings, with one being the overturning of the earlier ruling. They are both based on the constitutional right for privacy, the freedom of choice, and the moral nature of a given legal system. While the courts considered the two cases, they based their arguments on these constitutional doctrines, taking different legal reasoning and relying on different philosophical prepositions to arrive at their judgments.

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Under the American legal system, the common law doctrine of stare decisis is a fundamental tool that guides the decisions of all courts. Under this principle, the lower courts are required to conform to the decisions of the higher ones in cases where there are similar facts to the earlier decision by the higher. Similarly, higher courts are required to also abide by its own decisions where there is a case with similar facts to the already decided. Therefore, stare decisis

is a doctrine that binds all courts, including the Supreme Court. This doctrine is founded on the interest of uniformity and stability in the courts decisions, hence, maintaining the status and prohibiting the constant change of legal principals. However, the doctrine was not followed in the case of Lawrence v. Texas, as the court overturned the earlier decision in Bowers v. Hardwick.

Facts and Arguments in the Two Cases

Firstly, the facts of the Bowers case were that an unsuspecting guest let a police officer into the home of Mr. Michael Hardwick in Atlanta. The police officer went all the way into the bedroom, where he found Hardwick engaged in oral sex with another man. The two men were arrested by the police officer and charged of sodomy. However, the local District Attorney's Office refused to present the case before a grand jury unless more evidence could be presented. Hardwick then decided to file a lawsuit, asking the United States District Court for the Northern District to Georgia to invalidate Georgia's anti-sodomy laws that are based on constitutional grounds. The case was then taken to the Supreme Court, where the Attorney General Bowers defended Georgia's anti sodomy statutes. The Supreme Court, rejecting Hardwick's claim, framed the issue as whether the Federal Constitution granted a basic right of homosexuals to be involved in sodomy and, therefore, invalidated the laws of many states that still made this conduct unlawful and had done so for quite a long time. The court, thus, stated that laws categorizing sodomy as a crime did not violate the constitutional entitlement for privacy. In the court's reasoning, it argued that it could not discover new fundamental rights arising out of the Due Process Clause of the 14th Amendment, because to do so would be to render the court vulnerable and open to claims of illegitimacy. Secondly, the court refused to acknowledge Hardwick's First Amendment claim, which was based on the suggestion that certain private

behavior, such as sexual activities, deserved being protected even, although it would not receive support when performed publicly. The court, thus, refused to abolish Georgia's anti-sodomy laws stating that the laws were based on notions of morality and, hence, represented essential moral choices of the society.

However, the decision in *Lawrence v. Texas* United States Supreme Court (26 June, 2003) dismissed all these arguments in the case of *Bowers v. Hardwick*. The facts in *Lawrence v. Texas* were that police officer went to a private residence in response to a reported weapons disturbance. They went into John Geddes Lawrence's apartment and witnessed him and Tyrone Garner being engaged in a sexual act. They were consequently arrested and charged. The issue before Supreme Court was whether the Texas law, criminalizing sexual conduct between same-sex couples but not opposite-sex partners, violated the constitution's guarantee of equal protection and whether the criminalization of adult consensual sexual conduct violated the constitution's guarantee of privacy (Barlett & Rhode, 2010, p. 4-19). The court in overturning the decision in *Bowers* relied on a number of arguments and reasoning that had been expressed in the earlier case. On the framing of the issue in *Bowers v. Hardwick* as to whether the constitution of the country conferred a fundamental right of the homosexuals to be involved in sodomy, the court stated that this reflected the failure of the court to properly value the scope of the liberty in question. Justice Kennedy, thus, ruled to assert that the *Bowers*' issue was solely the right of homosexual to have sex, which was amounted to a disregard of the entire case. He stated that this assertion would not taste any better to a married couple, where it would be asserted that the reason for there was simply to have intercourse.

The court then dismissed the use of history in the *Bowers*' case, holding that ancient criminal laws were not directed at "homosexuals" as a particular category but a certain kinds of

non-procreative sex. The court looked at the issue as to whether individuals had the right to engage in homosexual sodomy, based on the due process clause in the 14th Amendment. It, therefore, relied on the American case of *Planned Parenthood of Southeastern United States v. Casey* for the proposition that these matters, involving the most intimate and personal choices which a person may make in a lifetime, choices central to personal dignity and autonomy, were central to the liberty that is protected by the 14th Amendment.

However, the two cases share only one similarity regarding the place of morality in the law. In *Lawrence v. Texas*, the court recognized that moral disapproval of homosexual conduct was strong and long standing, but it affirmed that moral disapproval was not the key question. Its position was motivated by the issue whether the majority may use the power of the state to enforce these views on the whole society through the operation of the criminal law. The court's obligation is to define the liberty of all, not to mandate its own moral code.

The Supreme Court, in overturning the decision in *Bowers v. Hardwick*, issued a declaration of constitutional liberty for gay men and lesbians in the process of invalidating the Texas anti-sodomy laws. This decision contrasted with the decision concerning *Bowers*, which upheld similar anti-sodomy laws. The Supreme Court in the *Lawrence* case stated that gays have the right to be respected for their private lives, and, hence, the state has no right to reject their entitlement for existence or control their lives by categorizing their sexual conduct as a crime. In this way, the court affirmed the constitutional rights to privacy and liberty for all individuals, including the homosexuals, but not just for the select few.

In trying to understand the reasons concerning why the court reversed itself within such a limited period, the decision of *Bowers v. Hardwick* case was assessed in relation to its impact on the society. The court, thus, must have found the decision to be intensely divisive, as it was

based on foundations which had been eroded by subsequent decisions. Thus, relying on such decisions as *Dudgeon v. United Kingdom*, the court found it necessary to reverse the decision in *Bowers v. Hardwick*. Similarly, the court assessed the impact of the earlier decision on the basis of the rights of individuals to be highly infringing these rights. In addition, compliance to laws that infringed the fundamental rights of individuals was difficult. The decision had been a subject of substantial and continuing criticism, and it had not induced societal reliance that counseled against overturning it.

The issue of homosexuality in the two cases indicates a fundamental concept in the democratic process and how objectiveness and independence can be used to achieve the democratic rights of the people. The ruling in *Bowers v. Hardwick* caused uproar among gay activists and gave them the impetus which they needed to push for the recognition of their rights. These rights were subsequently recognized in the case of *Lawrence v. Texas*, reflecting the relation between the democratic process and the idea of an independent and objective court.

References

Bartlett, T.B., & Rhode, D.L. (2010). *Gender law and policy: Theory, doctrine and commentary*. New York, NY: Aspen Publishers.