

**BOWERS v.
HARDWICK &
LAWRENCE v.
TEXAS**

**PHIL 102
Ethics, Politics, & Law
Dr. Jeff Johnson
Spring Quarter 2008**

**Privacy & the
Supreme
Court**



- Birth control
- Abortion
- Inter-racial marriage
- Right to die

**FOURTEENTH
AMENDMENT**



Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**BOWERS v.
HARDWICK**



- Facts in the case
- Georgia statute
- Ruling by the Eleventh Circuit Court
- Gamesmanship for *certiorari*
- Make up of the Court

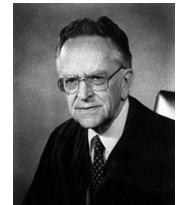
THE CONSERVATIVES



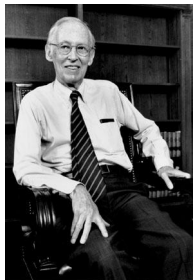
THE LIBERALS



Brennan
(Courtesy of the U.S. Supreme Court)



THE SWING VOTE



MAJORITY OPINION



- Justice White
- No right to homosexual sodomy
- Never mentions privacy
- Western traditions
- Worries about new Due Process rights

JUSTICE POWELL'S CONCURRENCE



- Justice Powell
- Worry about new Due Process rights
- Eighth Amendment
- 20 year prison sentence
- Hardwick was not convicted
- Powell's regret at retirement

JUSTICE BLACKMUN'S DISSENT



- Justice Blackmun
- Case is about privacy
- Uses constitutional precedent
- Not impressed by the long held views
- Fundamentally important to a person

FACTS IN LAWRENCE v. TEXAS

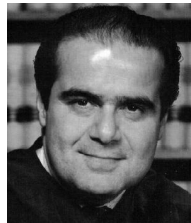
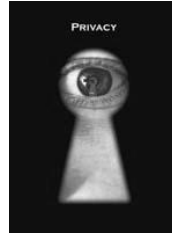


- False report of an armed intruder
- The Texas law
- The arrest and conviction
- The appeal

"LIBERALS"



CONSERVATIVES



"MODERATES"



MAJORITY OPINION



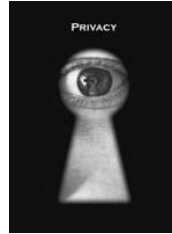
- Justice Kennedy
- Explicitly addresses and overturns *Bowers v. Hardwick*
- No longstanding legal discrimination against homosexuals
- Due Process right to liberty and privacy in the home

JUSTICE O'CONNOR'S CONCURRENCE



- Justice O'Connor
- Her ruling in *Bowers v. Hardwick*
- Agrees that the law is unconstitutional
- Fourteenth Amendment's Equal Protection Clause

JUSTICE SCALIA'S DISSENT



- Justice Scalia
- “I have nothing against homosexuals ...”
- *Stare decisis* and *Roe v. Wade*
- No right to homosexual sodomy
- Rational basis of the Texas law
- The “homosexual agenda”

FURTHER IMPLICATIONS



- Sodomy statutes in 1960
- The sexual revolution
- General right to sexual privacy
 - Fornication
 - Adultery
- Other homosexual rights
- Homosexual marriage