

Lawrence Was Always about Religious Intolerance

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In overturning Texas's "Homosexual Conduct" statute and similar statutes in twelve other states last June, the Supreme Court removed religious prohibitions of same-sex sexual conduct from state law. Few people talked about religion in the case. The state of Texas simply claimed that its anti-sodomy law protected public morality. Yet the whole thing was about religion.

To be sure, the states had increasingly masked the religious character of these statutes by removing such explicitly biblical language as the word "abominable" (found in Leviticus) and the phrase "against nature" (in Paul's Letter to the Romans). But religious, and especially Christian, values underlay these statutes. Chief Justice Warren Burger knew that when he wrote an opinion for the Supreme Court in favor of upholding Georgia's anti-sodomy law. In the 1986 *Bowers v. Hardwick* decision, he said that Georgia's sodomy statute was firmly rooted in "Judæo-Christian moral and ethical standards."

Justice Harry Blackmun was also keenly aware of the religious underpinnings of sodomy laws. In his minority opinion in *Bowers v. Hardwick*, Blackmun excoriated Georgia, which cited the Bible and other religious sources to justify its sodomy statute: "A State can no more punish private behavior because of religious intolerance than it can punish such behavior because of racial animus."

Certainly many of our laws have a religious origin, which does not automatically make them suspect. Later generations may find that they serve a legitimate and valuable secular purpose. But Texas never articulated a secular purpose for its "Homosexual Conduct" statute. Its justification of the statute—the "enforcement of principles of morality and the promotion of family values"—shows that opposition to same-sex sexual acts is grounded in religious morals and religious values.

The history of the criminalization of such acts makes this patently clear. It was when the Roman Empire became Christian that sexual acts between males became a crime. In the Middle Ages, sodomy, which encompassed a variety of non-procreative sexual acts, was persecuted as a Christian heresy by church courts. When Henry VIII took over the church courts in England, "buggery" came under the jurisdiction of the King's Courts (1533) and consequently entered into the mainstream of Anglo-Saxon law, which would later be exported to the American colonies and eventually the states.

An earlier version of the Texas statute criminalized "the abominable and detestable crime against nature," directly alluding to biblical condemnations of same-sex sexual contact (again, both Leviticus and Paul's Letter to the Romans). Just because the biblical language was later removed from the Texas statute does not mean that the biblical condemnation of same-sex sexual practices was absent.

With these religious underpinnings masked, public debate about these religious values became truncated and distorted. Many people still do not realize that countless Christians and Jews, basing their faith on other biblical values such as justice for the marginalized and love of one's neighbor, welcome per-

sons of all sexual orientations into their congregations. There are Jewish parents who want the best for their children, and for them to be accepted in the Jewish community. There are Catholic nuns working to prevent sexual abuse and not sexual relations between consenting adults. And there are Jewish and Christian congregations that affirm the full participation and leadership of persons of all sexual orientations.

Many thoughtful religious people are acutely aware of religious mistakes of the past. Christians used the Bible to support slavery, anti-miscegenation statutes, and even to oppose interracial dating. People of many traditions have argued that women should obey their husbands and even that husbands may beat their wives. U.S. law has reflected those religious values.

The Christian value of condemning same-sex love is not a tradition of which Christians can be proud. Now that the Court has recognized that a religiously diverse and secular society cannot base its law on one strand of religious morality, perhaps Americans of all religions and of no religion can devote desperately needed energy to the problems of sexual ethics that really matter: preventing sexual abuse, sexual harassment, and domestic violence.

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