MORALITY AND THE LAW: BOWERS AND THE RIGHT TO PRIVACY

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This article examines the right of privacy with emphasis on the Supreme Court’s ruling in the case of Bowers v. Hardwick, as this case illustrates issues that arise in the context of government interference with citizen’s actions and with the broader context of morality and the law. I argue specifically that the Supreme Court erred in its ruling on the Bowers case by failing to recognize that the moral value of autonomy in this case outweighs the right of a state to establish statutes based on the perceived moral attitudes of its constituencies. I argue generally that moral principles can inform decisions about the ordering of the right of privacy and the moral claims that aim to limit the right.

Introduction

It has become fashionable these days for citizens to condemn government’s interference in their lives. Political candidates and parties have shaped entire campaigns and platforms around the promise to get the government out of our private lives (or business). The reaction to government intervention has, in some quarters, reached a state of paranoia, leading in the most extreme cases to formation of paramilitary groups and violent acts directed toward the government. In this climate, a serious examination of privacy and how it affects government in our lives—what it means and what right to it we possess—is needed. This article examines the right of privacy, paying special attention to the Supreme Court’s ruling in the case of Bowers v. Hardwick, as this case illustrates issues that arise in the context of government interference with citizens’ actions and with the broader context of the relation of morality and law.¹
I argue specifically that the Supreme Court erred in its ruling on the *Bowers* case, failing to recognize that the moral value of autonomy in this case outweighs the right of a state to establish statutes based on the perceived moral attitudes of their constituencies. I argue generally that moral principles can inform decisions as to the ordering of the right of privacy and the moral claims that aim to limit the right. Much of the literature on the right of privacy and the law focuses on legal or constitutional grounds for the right of privacy. This article takes a different approach by setting up moral principles as the basis of determining what justifies moral claims to be enforced in law.

**The Case of Michael Hardwick**

On 3 August 1982, officers from the Atlanta Police Department went to the home of Michael Hardwick because he had failed to appear in court on a minor charge. Hardwick’s housemate granted access to the officers, and directed them to Hardwick’s room, where the officers found Hardwick engaged in an act of sodomy with another man. They arrested Hardwick and charged him with violating the Georgia statute criminalizing sodomy. A preliminary hearing was held, but the District Attorney declined to prosecute the matter further. As a self-described practicing homosexual, Hardwick asserted that the anti-sodomy law placed him in imminent danger of arrest, so he filed suit in Federal District Court, arguing that the statute was unconstitutional. The District Court ruled against Hardwick, who then took the matter to the Court of Appeals for the Eleventh Circuit, where he received a favorable ruling. After that ruling, Michael Bowers, then Attorney General of Georgia, appealed to the Supreme Court, which held that Georgia’s anti-sodomy law was, in fact, constitutional. It is upon the Court’s ruling that this article initially focuses.

**The Right of Privacy: Moral and Legal Meaning**

Although it will not be possible within the scope of this article to set out completely the meaning of a right of privacy, a working understanding of the term in a moral and legal context will be helpful. The sense of “right of privacy” that is relevant to this article is