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## **That's My Right, too: Punishment for Being Different**

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Genuine legal equality: a simple phrase, but tied up in these three words is the impetus for the Gay Rights Movement for this is the very basis of democracy in the United States. Of course, the ultimate goal of any liberation movement would be social acceptance; but, ultimately, the Constitution can only protect the legal rights of the citizenry. However, the United States Government does not protect the rights of gays and lesbian, and in many ways, punishes and prevents this population from enjoying full equality. This unit will explore the five particular moments in the Gay Rights Crusade: the Stonewall Riots; Anita Bryant's Crusade; Decriminalization of Homosexuality; Don't Ask Don't Tell; and the battle for same-sex marriage. These moments have been chosen not because they represent the entire story of the Gay Rights campaign, but because the gay population was punished for their sexual orientation by an official government agency. In some cases, the government agency has made redress and this redress will be explored. In the end the overarching goal will be to have students explore the tension between government and the individual.

To approach controversial moments in history with dignity, it is imperative that the teacher remains unbiased. Of particular concern with this unit is not the content of the history being studied, but the strong emotional response that sometimes accompanies a discussion about homosexuality. My unit is designed for eleventh and twelfth grade students. Also, I believe it is imperative that as teachers that we challenge our students on both the intellectual and academic level as long as we do so in with a safe, productive lessons that are rooted in rigorous pedagogy. In my unit design and classroom instruction, it will be necessary that the conversation and lessons are structured enough to allow all voices to be heard and validated, and that students are given an authentic occasion to express their views.

## **Rationale**

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I mostly teach 11th and 12th grade at New Haven Academy, a small interdistrict magnet school in New Haven, Connecticut. The size of the school helps to foster an environment rich in intense and close relationships among the members of the school community. Black and Hispanic students make up 80% of the student body, the remaining 20% are Caucasian. Also, roughly 65% of the students are from New Haven while the remaining 35% reside in the suburbs of the city. A large portion of the student body qualifies for free or reduced lunch, and the school qualifies for a free breakfast program. Classes at New Haven Academy are small, are sixty to

seventy minutes in length, and in the Humanities Department, meet daily. Therefore, students are able to spend a significant amount of time investigating and studying each unit of study. Finally, New Haven Academy does not track students, and there is no leveling of students based on ability. Therefore, at any given moment I will have students whose abilities differ greatly. Therefore, it is imperative that all of my activities are accessible and meaningful for a variety of students.

New Haven Academy has an intense relationship with an outside organization, Facing History and Ourselves. A not for profit international organization, Facing History's mission as an organization is to foster a critical understanding of the choices we make and to force students to take responsibility for their community. The Facing History network is large and each member school participates differently with a varying amount of intensity. At New Haven Academy, participation is intense, and we utilize the Facing History curriculum extensively. In the ninth grade students take a seminar titled the Holocaust and Human Behavior. The course is a study of the Weimar Republic and the events that lead to the Holocaust. In the tenth grade students take a course that applies the scope and sequence of studied in the Holocaust course to three additional atrocities: the Armenian Genocide, Apartheid in South Africa, and the Rwandan Genocide. The basic goal of the second course is to examine the connections and patterns that emerge in history. In the eleventh and twelfth grade student do not take a specific Facing History Course. However, the themes explored by this curriculum model continue to place an integral part of the upper level elective offerings. In the twelve grade students complete an independent Social Action project. In this project students choose a local, national, or international issue, and design and implement an independent community service project to address the issue. Each year the elective offerings vary based on student interest. However, these offerings are always centered on the common themes of the traditional Civics course, a requirement in the state of Connecticut. In the fall of 2009 this unit will be taught as part of my Crime, Punishment, and Justice course. The course will explore the theoretical and practical nature of crime and how the community, through official and unofficial means, regulates the behavior of its citizens, and punishes those who deviate from the norm.

## Objectives

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The principle objective of this unit is to explore the rise of the Gay Rights Campaign and the obstacles and challenges that have been met. It is not the goal of the unit to promote the "gay agenda" or a "gay lifestyle". However, in the present day, the gay and lesbian population is stigmatized and denied equal access in American society. This unit will explore how the government, and society in general, has legitimized these actions, and consequently, how the gay and lesbian community has fought, and only recently, achieved some degree of equality. In a Civics course, it is paramount that students explore the nature of their Civil Rights, how they are defined, regulated, and protected. This unit is designed to do just that.

The first content objective is to explore the origins of the Gay Rights Movement. It is possible to explore the early roots of the Movement, and make important, relevant, historical ties to the early part of the 20<sup>th</sup> century. Certainly, there were many groups, and individuals, who fought for gay and lesbian equality. However, for the purposes of this unit, I have chosen to start with the Stonewall Riots of 1969. Akin to the Black Civil Rights, which had its roots, and important success, in an earlier time period, the movement starts in 1954 and 1955 with two key events: victory in *Brown v BOE* that ended the legal segregation of public schools, and secondly, the lynching of Emmett Till, which brought into the national consciousness the horrors of the Jim Crow South. Likewise, the Stonewall riots brought into national consciousness Gay Rights. In this part of the unit, students

will explore the raid and subsequent riots at the Stonewall Inn through first hand accounts and newspaper articles. The primary goal of this section is to explore how the gay population was targeted because of their sexuality.

The second section of this unit will explore the efforts of Anita Bryant and her attempt to criminalize gayness with official public policy. Bryant was successful in some cases, but as her campaign progressed, there was also considerable backlash that prevented her from complete success. Her crusade in two locales will be explored, Miami, and in California. The objective here is to explore the real, substantial, influential power that the public holds in the democratic process. In these two cases, the issue was placed before the voters in a referendum. The philosophical and theoretical nature of this type of direct democratic process will be explored, an important facet of any Civics curriculum.

The third section of the unit will explore efforts to decriminalize homosexual behaviors. Two court cases will be explored, *Bowers v Hardwick* (1986) and *Lawrence v Texas* (2003). The former declared that sodomy laws were constitutional while the latter declared just the opposite. In the crusade for gay rights, the *Hardwick* case presented a major setback. The Supreme Courts ruling allowed sodomy laws to continue to be used as the basis for most of the anti-gay policies that existed. At this time the basic right to privacy will be explored.

The fourth section of the unit will explore another effort to punish homosexuality, the Military's "Don't Ask, Don't Tell" policy. In the early years of the Clinton Administration this law was passed and while it removed direct questioning about sexuality from recruitment applications, it still prevents openly gay and lesbian soldiers from serving in the armed services. The purpose of this section of the unit is to have students explore how the government uses official policy to dehumanize and discriminate against its own citizens.

The final section of the unit will explore the current debate over same-sex marriage, using Connecticut as a case study. Originally, Connecticut created a Civil Union Law that granted same-sex couples all of the same legal protections and benefits afforded a married couple. However, the CT Supreme Court would later rule that these relationships in fact must be called marriage, and declared the act unconstitutional as it withheld marital status from same-sex couples. Students will use this case study as an exercise in exploring what genuine legal equality looks like.

## Strategies

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What follows is a description of how I would like the unit to unfold in the classroom. It follows the same order as the objectives listed above, but expands upon each of these moments, and offers more structure and direction in how to teach those objectives. This section also includes relevant background information and references to useful resources.

### **The Start of the Movement**

By 1969 New York City had made less progress in gay and lesbian rights, but a new younger generation was quickly overtaking the conservative Mattachine Society, a group formed in the 1950s. It was thought that this group was not confrontational enough. These youth would utilize the energy and methods that they had practiced and honed during the anti-war protest. This revolutionary mood would explode on June 27<sup>th</sup>, 1969. It

was the day of movie star, and gay icon, Judy Garland's funeral. When the police arrived at the Stonewall Inn, the gays were not in the mood to be harassed. The police entered the bar that night to collect their customary payoff from the bar's owners, and in the process began to arrest some drag queens. The anger and frustration of the gay population exploded into some attacks on the policemen. A large crowd quickly formed and for three nights rioted in the streets of Greenwich Village. As shouts of "Gay Power" echoed in the streets, Allan Ginsberg noted that gay had lost "that wounded look." Lucian Truscott noted in his article for the *Village Voice* that at the onset of the violence that "limp wrists were forgotten" and replaced with the throwing of beer cans and other objects.<sup>1</sup> What is evident here is that the usually complacent population had finally woken up, and in an instant engaged in mass protest against their oppressors.

In the classroom, I think an investigation of the Stonewall protests could take two distinct forms. Initially I thought it would be worthwhile to examine the newspaper articles written in 1969 about the Riots. However, I quickly realized that this might not be an appropriate method. The *New York Times* only offered a perfunctory report of the incident. There are some well-written articles published by *The Village Voice*. However, these should be used with caution - I feel that they are heavily biased. The other approach that comes to mind is to read first hand accounts of the riots from the rioters themselves in an attempt to figure out what their motivation was. Again, these accounts are inherently biased. Bias is not necessarily a negative attribute; but it should be noted, and made explicit to students, that bias has a particular impact on a journalist's reporting.

One account, by Rey Rivera, is particularly useful. It does a really nice job of making clear to the reader the crowd's motives and the underlying frustration that was present. Rey was born in New York City but had escaped to lower Manhattan in the mid 60's to find a community of his own. As a Drag Queen, Rey, or Sylvia Lee, had encountered much harassment growing up. He describes his motivation in the following account of the Riots and the time period. He had decided to get "involved with a lot of different [protest] things because I had so much anger about the world, the way it was, the way they were treating people. When the Stonewall happened, it was fabulous . . . I was drinking at the bar, and the police came in to get their payoff as usual . . . [with their] inhumane, senseless bullshit. They called us animals; we were the lowest scum of the earth . . ." Rey clearly understood the expected role that the gay population was to play, but for some reason "that night, everything just clicked." He goes on to say that "to be there was so beautiful. It was so exciting. I said, "well great, now it's my time. I'm out there being a revolutionary for everybody else, and not it's my time to do my thing for my own people . . . [Police oppression] is what we [had] learned to live with at the time. Until that day."<sup>2</sup> It was at this time that this particular group of people began to assert themselves and to shed the oppressed demeanor that they had carried with them for so long.

I think Stonewall plays an important part in this unit, and I would be remiss to not investigate this particular event. There are two key points and connections that can be made to the unit at large. First, the moment of realization for self-advocacy is an important step. It is imperative that every oppressed group plays a role in fighting off their oppressor. This can only happen if the group becomes cognizant of the power that they hold as a group - hence the use of the rallying cry "Gay Power" is exceedingly important. First, it is reminiscent of the changes in the Black Civil Rights Movement, and the rise of Black Power. In a way, this relates back to the Civil Rights Song, "Eyes on the Prize." The chorus of the song had two key lines, but only the second is commonly used. "The one thing we did right, was the day we started to fight" is immediately preceded by "the one thing we did wrong, was staying in the wilderness too long."<sup>3</sup> By no means is this an effort to blame the victim. However, it is an important transition that an oppressed group must make to realize their power. The second connection to the larger themes of the unit is the way the gay population was viewed and targeted by the police. They were seen as weak and less than human. This perceived difference is a violation of the norms of society, and the police were responding accordingly. The lasting legacy of the Stonewall Riots is

remarkable. Quickly the event was marked as the birth of the Gay Liberation Movement, and yearly, the riots are commemorated in NYC, with the annual Pride Celebration.

In the classroom I would use the two articles written and published by *The Village Voice* as a way to begin investigating the events that transpired. Also, online there is a great collection of articles written by the New York papers. Having student examine the articles, reading carefully, and analyzing the text and tone of the text, is a great way to have them begin to understand bias. A simple graphic organizer could be used to help them dissect the articles, and provide structure for students who struggle with reading and interpreting primary source documents. The article collection can be found at <http://www.columbia.edu/cgi-bin/cul/resolve?AUZ6592>. This is an online version of a Columbia University exhibit about the Stonewall riots. Here a teacher can find many useful resources, mostly newspaper articles, about the event. Another way to examine the Riots is to have students read first hand accounts of the night as told by the people who participated in the Riots themselves. Online and in print, these resources can be found.

### **Legislating and Controlling Morality**

The movement might have been thrust in to the national spotlight after the Stonewall Riots, but it would be Anita Bryant's crusade against gay and lesbian right sin the late 1970's that would bring the morality of homosexuality to the forefront of American Politics.

Anita Bryant was a well known Christian Pop Singer and resident of Miami, Fl. When the city, under pressure from its large gay population, passed a city ordinance protecting employees of job discrimination based on sexual orientation, Bryant responded with the formation of her right-wing, Christian base political action group, Save Our Children, Inc. Rooted in Bryant's ideology was the notion that the gay community was targeting and recruiting children, and that they posed a moral threat to the social fabric of the city. She also advocated for keeping known homosexual away from children whenever possible, including firing teachers if necessary. Bryant was successful in her campaign, and in June of 1977, the city of Miami voted to overturn the ordinance protecting gay rights. She took her crusade to the national level. Eventually, she would join forces with John Briggs in California. On the ballot was an initiative to remove gay employees from public schools. In a statewide referendum, the initiative was defeated by a margin of 2:1. The premise of the efforts in California was that gay men and lesbian women were unable to perform the simple task of being professional because of their inherent character flaws.

In my classroom I am continually putting pressure on my students to read and write history for themselves. While some of my lessons are more traditional in their approach, most of the time, my students find themselves working with primary source documents writing their own history. In the second part of the unit, students again will be looking at some primary source documents relating to Anita Bryant, John Briggs, and the opposition they faced in California under the leadership of Harvey Milk. Certainly, there are many documents and resources that could be used to explore this topic, and an entire curriculum unit could be written on this subject. The three documents that I have chosen provide a brief glimpse at the ideological conflict that was present. All three documents can be found in *Gay and Lesbian Rights in the United States: A Documentary History* edited by Walter Williams and Yolanda Retter.

In an interview with *Playboy* magazine, Anita Bryant discussed her ideology, and revealed her motivation behind her Save Our Children organization. She states that,

[Homosexuals] were asking for special privileges that violated the state [sodomy] law of Florida, not to mention God's law . . . Why do you think homosexuals are called fruits? It's because they

eat the forbidden fruit of the tree of life . . . I was standing up for my rights as a mother to protect my children after I realized what the threat the homosexuals were posing meant . . . [The antidiscrimination ordinance] would have made it mandatory tat flaunting homosexuals be hired in both the public and parochial schools . . . If they're a legitimate minority group, then so are nail biters, dieters, fat people, short people and murderers . . . I have no respect for homosexuals who insist that their deviant lifestyle is normal. We pray for them, we try to lead them out of it . . . I love the sinner but I hate the sin.<sup>4</sup>

This short excerpt does a good job of giving insight into the motivations of Anita Bryant. There are a few key points that could be discussed with students. To start, notice the connection, and distinction, that Bryant makes between civic law and religious law. With a class, it might be interesting to discuss which of these ideologies is more important to our society. It would be a difficult question to word so that students would feel safe, and able, to answer it honestly and openly. Perhaps, which should play a bigger role in controlling the behaviors of people: religious doctrine or civic law? Secondly, the way that Bryant characterizes all homosexuals as being deviant is an important distinction. In one paragraph she not only creates the image of the homosexual pervert, but she also ridicules, and demeans the presence of gays as a legitimate minority group, whose rights out to be protected. Although her language is outlandish, and even insulting, she does raise an important legal, and constitutional, question. What qualifications ought a group have to be considered a suspect class by the government and therefore entitled to additional protection. On a side note, the Supreme Court would declare gays and lesbian entitled to special protection as a group in 1996 in the *Romer v Evans*<sup>5</sup> case. An examination of the Court's opinion, written by Justice Kennedy, and the dissenting opinion, written by Justice Scalia, are available online, and provide a nice contrast to each other. These could certainly be used in a classroom.

The second document to be examined in this section of the unit is a column by conservative journalist Michael Novak. In the following excerpt he asserts why homosexuality poses such a dangerous threat to society.

In past ages, homosexuality was sometimes construed as a danger to the human race because it meant (a) a decline in population, or (b) a decline in those masculine qualities essential for survival. What happened in the socialization of the young male was perceived to be a greater significance, and of greater risk, to the race that what happened to the female . . . Lesbianism may suggest infantile pleasure and regression, but it does not threaten the public, at least not to the same extent that male homosexuality does. . . . Female homosexuality seems somehow more natural, perhaps harmless. Male Sexuality seems to represent a breakdown of an important form of socialization . . . Society has a strong interest, in private and in public, in encouraging heterosexuality and in discouraging homosexuality.<sup>6</sup>

In this short excerpt, Novak gives two distinct reasons why homosexuality is so dangerous. The first is almost ignored after it is stated, while the second, on the other hand, plays an important role in Novak's argument. He dismisses the potential threat of women, but is quite fearful of men becoming less masculine. Indeed, he views the homosexual man as unable to be masculine. It is this danger that needs to be addressed by the California Initiative. Although the excerpt is not by Briggs, it does a nice job of encapsulating the ideas that he was promoting.

In the end, the Briggs Initiative was defeated by a 2:1 margin, thanks in part to the political mobilization of the gay community by San Francisco Supervisor Harvey Milk. As an additional activity, a viewing of the new movie *Milk* could be used. There are some segments that might be inappropriate for younger students. However, the



scenes where Milk and Briggs debate could be useful. While reading the excerpt above, I would have students first brainstorm about what masculinity is, and describe what the masculine man behaves like. I think this is an important discussion for high school students to have. Too many young men are simply not aware of what it means, and does not mean, to be a man. Also, by examining this little excerpt, students again will have the ability to discuss the government's role in legislating morality and protecting the rights of all its citizens.

The final resource that students should examine in this part of the unit is a speech by Harvey Milk, the openly gay member of the San Francisco Board of Supervisors, and de facto leader of the gay rights campaign. In June of 1978 Milk delivered the keynote address the Gay Freedom Day Parade to over a quarter million marchers. The speech is too long to be included in its entirety, but it can be found in Randy Shilts' book, *The Mayor of Castro Street*. It is known as "That's What America Is." There are few key excerpts that could be used with students. Of course, Milk famous opening line, "My name is Harvey Milk - and I want to recruit you" is an interesting piece of rhetoric, and could be used by itself in a lesson. On the one hand it makes fun of the common misconception that gay men are predatory in nature and a danger to society, but it also calls to mind the need for more gay men and women to become involved in the movement. He addresses this "conspiracy of silence" later in his speech. In this first excerpt he calls upon his fellow gay men and women to join him in the fight. He states:

My name is Harvey Milk - and I want to recruit you. I want to recruit you for the fight to preserve democracy from the John Briggs and the Anita Bryants who are trying to constitutionalize bigotry. We are not going to allow that to happen. We are not going to sit back in silence as 300,000 of our gay brothers and sisters did in Nazi Germany. We are not going to allow our rights to be taken away and then march with bowed heads into the gas chambers. On this anniversary of Stonewall I ask my gay sisters and brothers to make the commitment to fight. For themselves, for their freedoms, for their country.<sup>7</sup>

Milk is making a distinct connection between the dangers of complacency and the need for individuals to stand up and fight for their own rights. It could be argued that the connections to the Holocaust, and their supposed complacency are extreme, and unnecessary. This might be an interesting point to discuss with in class. He goes on to also connect the gay cause with the Black Civil Rights Movement. He states that "Blacks did not win their rights by sitting quietly in the back of the bus. They got off! . . . We are coming out to fight the lies, the myths, the distortions! We are coming out to tell the truth about gays!"<sup>8</sup> In the next part of his speech he states, "for I'm tired of the conspiracy of silence" that has become commonplace. Although he makes specific references in his next sentence to Anita Bryant, and later John Briggs, I think he is really talking about the silence of fear that a great many gay men and women live with. This is the reasoning behind the next section of his speech when he asks the crowd what role they will play in the struggle.

What are you going to do about it? You must come out . . . to your relatives. I know that that is hard and will upset them but think of how they will upset you in the voting booth. Come out to your friends, if indeed they are your friends. Come out to your neighbors, to your fellow workers, to the people who work where you eat and shop . . . Once and for all, break down the myths, destroy the lies and distortions. For your sake. For their sake. For the sake of the youngsters who are becoming scared by the votes from Dade to Eugene.<sup>9</sup>

Finally, in closing his speech, Milk extols the virtues of the United States and the ideals of the founding fathers. In his attempt to remind the marchers of the countries storied history, he makes an explicit connection to a greater constitutional ideal. America, in her quest for a more perfect union, has made its share

of mistakes, but certainly, these are the ideals that the country must strive for.

On the Statue of Liberty it says: "Give me your tired, your poor, your huddled masses yearning to breathe free." In the Declaration of independence it is written: "All men are created equal and they are endowed with certain inalienable rights." And in our National Anthem it says: "Oh, say does that Star-Spangled Banner yet wave o'er the land of the free." For Mr. Briggs and Mrs. Bryant . . . and *all* the bigots out there: That's what America is. No matter how hard you try, you cannot erase those words from the Declaration of Independence. No matter how hard you try, you cannot chip those words away from off the base of the Statue of Liberty. And no matter how hard you try you cannot sing the "Star Spangled Banner" without those words. That's what America is."<sup>10</sup>

Harvey's fight, and the fight for gay and lesbian rights is very much wrapped up in the ideals of America, and the equal protection of its citizens. Bryant and Briggs's attempt to remove gay and lesbian teachers from the school system would have allowed men and women to be accused and summarily punished, without the benefit of the judicial system. However, in this case, the democratic process was used to safeguard this usurpation of power. The punishment was baseless and unfounded, and steeped in stereotypes.

In the classroom I would have students look at the above excerpts critically and have a roundtable discussion about their meaning and potential impact on American society. Often it is difficult to measure a student's participation in a discussion. It is critical that the teacher develop a way to effectively evaluate not just the number or times a student speak, but also the quality of the student's contributions. All contributions should be recognized, but sometimes, but some students simply contribute more to a conversation. A simple protocol can be used to measure both the quantity and quality of any student's contributions. In the discussion, assign a point value to a student's contribution as follows: 1 point for asking a clarifying question, 2 points for making a comment or asking a discussion question, and 3 points for referring to the text, or building off another student's remarks. To make sure everyone participates you could also require that a student earn a specific number of points in the discussion, or require that everyone earn at specific minimum. To prepare for the discussion students should be given time to complete the readings in advance. I hesitate to give the readings as homework, as failure to complete the homework assignment would result in two zeros. Instead, I like to give students time right before the discussion to review the reading material. Finally, I believe it is imperative to change the layout of the room for this type of lesson. Chairs ought to be arranged in a circle, so that students have the ability to talk with each other. I think it is also important that the teacher not sit in the circle, as this is the student's conversation.

### **Homosexuality as a Crime**

This section of my curriculum unit will focus on two Supreme Court cases, *Bowers v Hardwick* (1986) and *Lawrence v Texas* (2003). It is quite easy to obtain the Court's decisions for both of these cases online. Simply type the case number into an Internet search engine. For *Bowers v Hardwick* use 478 US 186 (1986) and for *Lawrence v Texas* use 539 US 538 (2003). Also, these cases are part of the public domain.

The two cases are intrinsically connected; while the *Hardwick* case would declare sodomy laws constitutional, the *Lawrence* case would later overturn this ruling. In this section of the unit, students will explore the arguments and justification for both rulings. Wrapped up in this exploration is also the classic debate about the role of government in regards to a citizen's private life, and the constitutional guarantee of a person's right to privacy.



In the first case, *Bowers v Hardwick* (1986), the plaintiff was charged with violating the state's sodomy laws. In 1982, Hardwick was given a ticket for throwing a beer bottle. The arresting officer changed the court date from Tuesday to Wednesday on the ticket, but after Hardwick failed to present himself in court on the Tuesday, a warrant was issued for his arrest. The arresting officer then tried to serve the warrant himself, but Hardwick was not at home. When Hardwick arrived home, he realized he had in fact missed his court case, and tried to pay the ticket. However, the court would not let him, because the warrant had been issued, but not yet processed. The arresting officer then arrived at Hardwick's apartment to serve the then recalled warrant. Hardwick had an overnight guest sleeping on the couch who let the officer into the apartment. The officer, after walking around, went into the slightly ajar bedroom door, and found Hardwick and another adult engaged in consensual oral sex. Both men were arrested in violation of the state's sodomy laws, which, in Georgia, included both oral and anal sex with a person of the same sex. Hardwick sued and argued that as a homosexual, he inevitably would be prosecuted for his activities. The Supreme Court would eventually rule in favor of the state.

Most Supreme Courts cases are not easily read and understood by students, so therefore it is important that a teacher either present a shorter, excerpted version of the decision, or provide students with a mechanism for reading and understanding the sometimes verbose legal language. I think there are a few key passages from the case that can be used in the classroom, which might challenge some students, but would also be accessible to most students.

To summarize, the court states that the "issue presented is whether the Federal Constitution confers a fundamental right upon homosexuals to engage in sodomy, and hence invalidates the laws of the many States that still make such conduct illegal, and have done so for a very long time," and whether the Court has the mandate to declare such a position. The Court is hesitant to use its authority on this issue, and declares that while the Constitution speak only of life, liberty, and pursuit of happiness, a special consideration must be made for "those recognizing rights that have little or no textual support in the constitutional language." "This category includes those fundamental liberties that are "implicit in the concept of ordered liberty," such that "neither liberty nor justice would exist if [they] were sacrificed." A different description of fundamental liberties appeared in *Moore v. East Cleveland* . . . where they are characterized as those liberties that are "deeply rooted in this Nation's history and tradition." The Court is often very hesitant to expand the meaning of the Equal protection and Due Process clauses. The court concludes that consensual sodomy does not fall under this category.

What is particularly striking about the Court's decision is that while it could have stopped there, it goes on step further, and gives a certain legitimacy to the Sodomy Laws. In the closing paragraph of the decision, the Court basically declares homosexuality to be inherently immoral, and therefore, the laws themselves are justified. Justice White states that:

Even if the conduct at issue here is not a fundamental right, respondent asserts that there must be a rational basis for the law, and that there is none in this case other than the presumed belief of a majority of the electorate in Georgia that homosexual sodomy is immoral and unacceptable. This is said to be an inadequate rationale to support the law. The law, however, is constantly based on notions of morality, and if all laws representing essentially moral choices are to be invalidated under the Due Process Clause, the courts will be very busy indeed. Even respondent makes no such claim, but insists that majority sentiments about the morality of homosexuality should be declared inadequate. We do not agree, and are unpersuaded that the sodomy laws of some 25 States should be invalidated on this basis.

The decision would have an almost devastating impact on the gay rights movement, as the Court gave legitimate weight to the classic arguments used by the Christian Right.

While the majority of the Court supported the opinion of Justice White, the decision was 5-4, and more than one Justice wrote a dissenting opinion. Justice Blackmun concluded that the case was not about an individual's right to engage in sodomy, but it was really about an individual's right to privacy. He states that "the right of an individual to conduct intimate relationships in the intimacy of his or her own home seems to me to be the heart of the Constitution's protection of privacy." His final sentence brings home the realities of the Court's decisions, and the dangers the Constitution now faces. He "can only hope that here, too, the Court soon will reconsider its analysis and conclude that depriving individuals of the right to choose for themselves how to conduct their intimate relationships poses a far greater threat to the values most deeply rooted in our Nation's history than tolerance of nonconformity could ever do. Because I think the Court today betrays those values, I dissent." Certainly, Blackmun felt that the Georgia law called into question the very elements of life and liberty, and that the actions by the courts were a direct assault on those values.<sup>11</sup>

In the classroom, I would have students do an activity that allowed them to compare and contrast these two decisions. A simple T-Chart could be used for a graphic organizer in this case. While I think that would help students understand the rationale behind the two opinions, I think it would also be a really important step for students to evaluate the Court. They could even write a position paper about which opinion they believe to have more substance. Again, the central question here is whether the Court, and by extension, the government, has the right to interfere with the private lives of citizens. In what circumstances is this true? This could provide for an interesting discussion in class.

*Lawrence v Texas* (2003) would overturn *Bowers*. The facts of the case are remarkably similar. The arresting officer, in response to a domestic disturbance call (which was later discovered to be false) entered the apartment of John Geddes Lawrence, and found him having sex with Tyrone Garner. The two men were arrested under the state's sodomy laws, which were rarely enforced. The two originally plead no contest, but later changed their plea so that they could challenge the constitutionality of the Texas statute that forbade members of the same sex from engaging in sexual activities.

According to Lisa Duggan, the decision had a significant impact on the jurisprudence that had long been used to legitimize and discriminate against gays and lesbians. She asserts the "the Court's repudiation for outlawing gay sex was the rejection of a rationale that need not peak its name, since all a state needed to do under *Hardwick* was to invoke "morality." Now those who would use the state as a mechanism for privileging heterosexuality must speak, and in some detail."<sup>12</sup> In constitutional case law involving the Equal Protection and Due Process clauses, the Court has a specific scrutiny test at its disposal. However, it is thought that the issue would not be eligible for such tests, and that only a rational basis need be established to allow a law to be constitutional. This was the viewpoint of Clarence Thomas in his dissenting opinion. He felt the law itself was silly, and would vote against such a law if he was a legislator from Texas. But he also felt that the democratic process would be sufficient to change the law, and therefore, a rational basis was established. I think the underlying message here is that the court would be in a position, even if strict or intermediate scrutiny is not employed, to have the language at its disposal for the later fight for same sex marriage equality. There is not a direct link, but certainly, the rejection of morality as a rational test is subject called into questions by *Lawrence v Texas*. Evan Gerstmann would write in his book that the "*Lawrence* arguably undercuts one of the best known reasons for banning same-sex marriage: moral disapproval of gay and lesbian relationships."<sup>13</sup>

The general tone of the *Lawrence* decision is ambivalent at times, but the Court takes a significant step. In the decision, the Court moves from "open hostility" toward claims made by a despised group to one of tolerance, and that the Court "established a new baseline for legal regulation: neutrality as to private consensual adult intimate relations."<sup>14</sup> And while the decision does not go as far as affirming the relations, this constitutes a significant step in the Government's move towards ending discrimination.

After examining the *Bowers v Hardwick* case, students should more able to read and understand the *Lawrence v Texas* decision. I think it might be useful to have students compare the Court's language in *Lawrence* to that of *Bowers*.

### **Don't Ask, Don't Tell**

Initially, this unit did not include address this topic, but in the writing process I discovered that "Don't Ask, Don't Tell" is an incredibly important public policy that needs to be addressed. And although the scope of the unit needs to be limited, I truly believe that to remove any of the key moments would be a mistake. "Don't Ask, Don't Tell," and any public policy for that matter, is important because it is "a snapshot of the values, beliefs, and preferences of a culture at a given point in history."<sup>15</sup> Lehring also contends that public policy also goes beyond merely being a snapshot. Since the process is interactive, the government must create policy that meets the approval of the people, while at the same time helping to shape a society's cultural values by creating official meanings and granting legitimacy and recognition.<sup>16</sup> Consequently, it is in military policy that homosexuals first appear as a concern to the federal government. Furthermore, it will be the military's policies describing who and what homosexuals are that becomes the basis decades of official prejudice and discrimination.<sup>17</sup> And while the exclusion of homosexuals from the military is revealing, the most important aspect of this particular case is the legitimacy, under the authority of the United States Government, which the political construct of homosexuality is made to seem rational.<sup>18</sup>

Initially, the homosexual is seen as a threat to national security, and therefore banned from serving in the military. It was thought that, "their sexuality makes them more susceptible to blackmail by enemy agents and spies, who might threaten to reveal their sexuality."<sup>19</sup> This was disproven by the Navy's own report, "the concept that homosexual pose a security risk is unsupported by any factual data," but was suppressed for twenty years until a court ordered its release.<sup>20</sup> And yet, twenty years after it was written, in 1982, the Defense Department still claimed that homosexuals were prevented from serving in the military to prevent breaches of security. It seems that the military itself has no real justification for barring gay men and women from serving. Secretary of Defense Dick Cheney, is said to have told President-Elect Clinton that the exclusion was "just a quaint little rule, but we're not going to change it." Lehring concludes that because the military is relying upon age-old stereotypic claims, the stereotypes in turn become legitimized and accepted, thereby making other legal reform more difficult.<sup>21</sup> These included the idea that gay men were of bad character, had a defective personality, and a sexual pervert, who is not to be trusted. The last characteristic is so pervasive that even today, under "Don't Ask, Don't Tell" the accused are rarely believed when they are investigated and prosecuted for being a homosexual.

It is important that the teacher recognize that inevitably some student will be in favor of the ban on homosexual in the military. It is necessary that all students feel safe to express this viewpoint. Therefore, it is important to acknowledge the arguments for allowing "Don't Ask, Don't Tell" to remain as the accepted policy. In her paper, "Fighting for a Just Cause: Soldiers' Views on Gays in the Military," Laura Miller surveyed an extensive cross-section of military personnel, in an effort to understand how these individuals felt about the

ban. She discovered that 75% of the servicemen and 43% of the service women supported the ban. At the time of the study the Armed Services was 88% male and 12% female. She also discovered that in general the servicemen's feelings were more intense. Three primary reasons emerged for keeping the ban: homosexuality is immoral; homosexuality would reduce the army's cohesion, morale, effectiveness, and good discipline; fear of intimate situations with someone of the same sex who is sexually attracted to them.<sup>22</sup>

The first reason, homosexuality is immoral, was the first objection that was usually raised in the author's interviews. She reports that many service members viewed homosexuality as a choice and resisted any comparisons between homosexuality and other statuses, like race or gender. Furthermore, these soldiers contend that morals play a more significant role in military life than civilian life. Soldiers are expected to adopt and follow a moral code. Failure to abide by this code could result in punishment. Homosexuality, therefore, falls under the same proscriptions as alcoholism, adultery, and spousal abuse.<sup>23</sup>

The second reason, homosexuality undermines military effectiveness, is based in the perceived anger that might arise among military personnel. Most of those surveyed thought that the army was ill-equipped to handle problems caused by lifting the ban, including the loss of cohesion within a unit, and leads to the third reason, fears associated with sharing tight living quarters with a homosexual. Most soldiers reported that they would feel uncomfortable sharing a room with a known homosexual. Finally, a majority of the male soldiers who support the ban stated that they would not stay in the armed services if the ban were lifted. These are all very powerful reasons for the allowing "Don't Ask, Don't Tell" to remain in place.

In 1948 President Truman announced that he intended to desegregate the armed services. The right to serve springs from the idea that attached to military service are the equal rights of citizenship. In many ways, the fight to lift "Don't Ask, Don't Tell" is held in the same regard. I think the best way to tie this part of the unit together and to have students think critically about the issue, is to have them examine the ban in light of the *Lawrence* case. Does *Lawrence* undermine "Don't Ask, Don't Tell?"

In the end, a simple truth remains. Gays and Lesbian have always been allowed to serve as long as they remain closeted. But after all of the justifications had been disproved, the military asserted its final charge, and it might be this charge that will be the hardest to overcome. "Homosexuals as a group will interfere with morale, discipline, and good order because of the hatred and bigotry manifested by straight soldiers who are forced to share intimate quarters and bathroom facilities with them."<sup>24</sup> What is most enthralling about this assertion is that the military itself nurtured the animosity, bigotry, and hatred towards gays and lesbians.

It is perhaps a necessary step at this time to actually define the nature of "Don't Ask, Don't Tell." Officially, the policy has two additional phrases that are left out of colloquial use, but are important to understanding the policy as a whole. These are "Don't Pursue, Don't Harass." For ease, the four pieces will be defined in order. "Don't Ask" means that servicemen will not be asked about or required to reveal their sexual orientation. "Don't Tell" means that service men are forbidden to reveal their sexual orientation in most cases. "Don't Pursue" means an investigator would only be allowed to make inquiries with a limited scope. "Don't Harass" means that the armed services made it explicit that harassment, for any reason, was not to be tolerated.

It is my goal and intention in this section to have students explore the "Don't Ask, Don't Tell" policy through the close reading of primary source documents. These will include the official legislation passed by the US Congress, the transcript of Bill Clinton's Press conference announcing the new policy, and first hand accounts of soldiers who were discharged from the army because of their sexuality. One such account, from Steve May, is particularly useful in understanding the sometimes-absurd nature of the policy and how it is implemented.

In the narrative, May speaks a great deal about the being honorable, and how serving in the military taught him to be a strong leader. When speaking about his separation hearing, May recalls that, "on that day I was ashamed that my country would treat one of its soldiers that way. I was ashamed for my army. I was ashamed for the fellow officers who treat another officer in that way, which was completely unnecessary."<sup>25</sup> Later in his account, May also asserts that the military's resistance to change is profound and deep, and that to overcome this, the American Public must demand equality.

The reality is that military leadership will always oppose significant change. They have done so in the past and will continue to do so in the future. Those people who are in positions of leadership today have been told for twenty years or more that homosexuals are unfit for military service. They have been told this so often that whether or not it is true, they believe it and will not change. The American people will have to demand change, because they will recognize this policy is unfair and unjust . . . they will recognize this policy does not reflect the values of the American Founding Fathers and it conflicts with who we are as an American people, who pride themselves on equality an justice for all."<sup>26</sup>

What is interesting in these two excerpts from May's story is that he places a heavy emphasis on ideas of justice and equality, and like Harvey Milk, he fundamentally believes in the ideals of the United States. Perhaps, it is this adherence to our national story, and a firm belief in the need to defend these ideals, that makes May an exemplary soldier.

## **Same-Sex Marriage**

The current discussion over same-sex marriage is a hotly debated topic, and in the last few years it has been brought into the national limelight. I think that it is important that in the context of this unit, and therefore in the classroom, a distinction be made between religious and civil marriage, as the two are very different institutions. This section of the unit will focus on marriage as a civil institution and Constitutional right.

In her book *Why You Should Give a Damn About Gay Marriage*, Davina Kotulski explores the benefits associated with being married. According to Kotulski there are roughly 1,049 Federal Rights linked to the institution, and approximately 300 more per individual state. These rights include tax benefits, insurance benefits, and hospital visitation rights. These rights are all important to understanding what it means to be married. This part of the unit will focus on the fight for same-sex marriage in Connecticut.

The U.S. Supreme Court has already defined marriage as a fundamental right protected by the Constitution. In *Meyer v Nebraska* (1923)<sup>27</sup> the Court clarified what the term liberty infers and determined that "without doubt, it denotes not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men." In 1967 in *Loving v Virginia* the court also asserted that, "The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men. Marriage is one of the "basic civil rights of man," fundamental to our very existence and survival."<sup>28</sup> A violation of this right, on the basis of race, was a violation of the Due Process clause.

Connecticut provides an interesting case study. In 2005 the Legislature, under its own volition, approved a Civil Union Law that would allow same-sex couple the same rights and benefits as married couple. The

legislature was the first to take this step without judicial intervention. However, three years later in October 2008 *Kerrigan v Connecticut* was decided. Originally the Superior Court asserted that Civil Unions provided equal protection and that the Connecticut Constitution did not require equal nomenclature. However, the CT Supreme Court would assert that relegating same-sex couples to Civil Unions was in fact a violation of the state's constitution.

Like "Don't Ask, Don't Tell" it seems that most of the arguments against same-sex marriage are rooted in the notion that homosexuality is immoral. In the classroom I think the natural starting point would be to connect same-sex marriage back to the *Lawrence v Texas* case, and determine if that decision has any relevance to the current debate. Second, an examination of the rights associated with marriage would be a worthwhile exercise. Finally, at this point, I think students would have ample evidence and knowledge to write about the issue and whether the US Supreme Court should take action or if the fight should continue on a state-by-state basis.

## Lesson #1: The Stonewall Riots

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Learning Objectives:

1. Students will read and analyze primary source documents
2. Students will explore the origins of the Modern Gay Rights Movement

Lesson Development:

1. Distribute copies of the two articles from The Village Voice to students. These are available online at: <http://www.columbia.edu/cu/lweb/resources/exhibitions/sw25/>
2. Individually, have students read the articles using the Active Reading Protocol. This is a four-step process.
3. Read the document
4. Highlight key passages and words
5. Code each highlighted passage: \* for something important; ! for something surprising; ? for a question; -> to make a connection.
6. In the margins explain each code.
7. After reading both articles, have students create groups of three. They should then discuss their notes and conclusions.
8. To check for understanding, have students write a two-paragraph reflection about the articles for homework.



## Lesson #2: Anita Bryant and Harvey Milk

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### Learning Objectives:

1. Students will explore the case of Anita Bryant and Harvey Milk
2. Students will analyze primary source documents

### Lesson Development:

1. Mount each passage in the center of a piece of Chart Paper - one passage per piece of paper. Hang the excerpts on the wall around the room.
2. Students can start at any of the passages.
3. They must read the passage and write a response.
4. After a few minutes, they rotate to a new passage. This time they read the passage, and other student's responses, and then add their own ideas.
5. After a few minutes, they rotate to a new passage and repeat the process.
6. They must remain silent for the duration of the activity.
7. After students have responded to each passage, they can revisit other passages and read what other students might have written.

### **Suggested Readings - All can be found in the Wilson and Retter book**

From Anita Bryant: [Homosexuals] were asking for special privileges that violated the state [sodomy] law of Florida, not to mention God's law . . . Why do you think homosexuals are called fruits? It's because they eat the forbidden fruit of the tree of life . . . I was standing up for my rights as a mother to protect my children after I realized what the threat the homosexuals were posing meant . . . [The antidiscrimination ordinance] would have made it mandatory that flaunting homosexuals be hired in both the public and parochial schools . . . If they're a legitimate minority group, then so are nail biters, dieters, fat people, short people and murderers . . . I have no respect for homosexuals who insist that their deviant lifestyle is normal. We pray for them, we try to lead them out of it . . . I love the sinner but I hate the sin.

From Michael Novak: In past ages, homosexuality was sometimes construed as a danger to the human race because it meant (a) a decline in population, or (b) a decline in those masculine qualities essential for survival. What happened in the socialization of the young male was perceived to be a greater significance, and of greater risk, to the race than what happened to the female . . . Lesbianism may suggest infantile pleasure and regression, but it does not threaten the public, at least not to the same extent that male homosexuality does. . . . Female homosexuality seems somehow more natural, perhaps harmless. Male Sexuality seems to represent a breakdown of an important form of socialization . . . Society has a strong interest, in private and in public, in encouraging heterosexuality and in discouraging homosexuality.

From Harvey Milk: My name is Harvey Milk - and I want to recruit you. I want to recruit you for the fight to preserve democracy from the John Briggs and the Anita Bryants who are trying to constitutionalize bigotry. We are not going to allow that to happen. We are not going to sit back in silence as 300,000 of our gay brothers and sisters did in Nazi Germany. We are not going to allow our rights to be taken away and then march with bowed heads into the gas chambers. On this anniversary of Stonewall I ask my gay sisters and brothers to make the commitment to fight. For themselves, for their freedoms, for their country.

From Harvey Milk: What are you going to do about it? You must come out . . . to your relatives. I know that that is hard and will upset them but think of how they will upset you in the voting booth. Come out to your friends, if indeed they are your friends. Come out to your neighbors, to your fellow workers, to the people who work where you eat and shop . . . Once and for all, break down the myths, destroy the lies and distortions. For your sake. For their sake. For the sake of the youngsters who are becoming scared by the votes from Dade to Eugene.

From Harvey Milk: On the Statue of Liberty it says: "Give me your tired, your poor, your huddled masses yearning to breathe free." In the Declaration of independence it is written: "All men are created equal and they are endowed with certain inalienable rights." And in our National Anthem it says: "Oh, say does that Star-Spangled Banner yet wave o'er the land of the free." For Mr. Briggs and Mrs. Bryant . . . and *all* the bigots out there: That's what America is. No matter how hard you try, you cannot erase those words from the Declaration of Independence. No matter how hard you try, you cannot chip those words away from off the base of the Statue of Liberty. And no matter how hard you try you cannot sing the "Star Spangled Banner" without those words. That's what America is."

## Lesson #3: Socratic Seminar

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Learning Objectives:

1. Students will conduct a Socratic seminar about the legalization of gay marriage and the end of the "Don't Ask, Don't Tell" policy.

Lesson Development:

1. The day before the Socratic Seminar, review the discussion protocol. In the seminar, they will be graded using the following guidelines: 1pt for making a comment or asking a clarification comment; 2pts for building off another students remarks or asking a discussion question; 3 pts for referring to the text. All students must earn a minimum of 4pts.
2. For homework the night before the seminar, they should brainstorm some questions, and fully prepare themselves for the discussion.
3. On the day of the seminar give the students 5mintues to review their notes.
4. Spend as much time as needed having the discussion. Usually, I make a list of students that have potential discussion questions, and simply have the class work their way through those questions. Either the teacher can keep track of the points, or even have students keep track of each other's points.
5. Two questions that should be discussed are whether same-sex marriage ought to be legalized by the Federal Government and whether openly gay men and women should be allowed to serve in the military.
6. As a follow up exercise to check for understanding, student should be required to write a 1-2 page reflection about the seminar discussion.

### Appendix 1: Implementing Standards

This unit applies most appropriately to three of the Connecticut State Standards for the teaching of Social Studies. This can be found at the following website:

<http://www.sde.ct.gov/sde/cwp/view.asp?a=2618&q=320898> and on the Connecticut Council for the Social Studies website at: [www.ctsocialstudies.org](http://www.ctsocialstudies.org).

Content Standard 1: Historical Thinking: Students will develop historical thinking skills, including chronological thinking and recognizing change over time; contextualizing, comprehending and analyzing historical literature; researching historical sources; understanding the concept of historical causation; understanding competing narratives and interpretation; and constructing narratives and interpretation.

This unit addresses this standard in many ways. To begin with, students are continually asked to formulate their own questions and to think critically about the past. Also, students are asked to work deeply with primary source documents and write about the past as historians formulating their own opinions.

Content Standard 4: Applying History: Students will recognize the continuing importance of historical thinking and historical knowledge in their own lives and in the world in which they live.

To address this standard students are asked to think critically about the past, and make very specific, concrete connections to the present day. This is most evident in the Socratic Seminar, where students should use their knowledge of the past to support their ideas about the present.

Content Standard 6: Rights and Responsibilities of Citizens: Students will demonstrate knowledge of the rights and responsibilities of citizens to participate in and shape public policy, and contribute to the maintenance of our democratic way of life.

This standard is addressed specifically in the section of the unit that examines the debate between Anita Bryant and Harvey Milk.

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Duggan, Lisa, and Nan D. Hunter. *Sex Wars: Sexual Dissent and Political Culture*. New York: Routledge, 2006. This book provides a good analysis of the sodomy cases.

Gerstmann, Evan. *Same-Sex Marriage and the Constitution*. New York: Cambridge University Press, 2008. This book examines the issue from a constitutional perspective, and looks at the debate in light of other Supreme Court Decisions.

Kotulski, Davina. *Why You Should Give a Damn About Gay Marriage*. Chicago: Advocate Books, 2004. This volume does a nice job of presenting arguments for the legalization of same sex marriage in colloquial terms.

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*Gays and Lesbians in the Military: Issues, Concerns, and Contrasts (Social Problems and Social Issues)*. New York: Aldine Transaction, 1994. This volume is a good overview of the debate and provided me with some interesting statistics about the soldier's perspective.

## Notes

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