

How does the rights of homosexuals be influenced by sodomy laws in the 1960s and 1970s

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Abstract:

The paper examines the fight for homosexual rights in the United States during the 1960s and 1970s, focusing on the significance of the abolition of sodomy laws and their impact on gay individuals. It highlights the cultural and legal context of the era, including the infamous Stonewall Riots of 1969, which sparked widespread activism. The essay delves into notable legal battles, such as *Buchanan v. Bachelor*, showcasing the efforts to challenge and repeal sodomy laws. Despite initial setbacks, these legal challenges laid the groundwork for future advancements in LGBTQ+ rights by establishing privacy rights as a constitutional issue. The period was crucial in setting the stage for further progress and the eventual dismantling of discriminatory laws against homosexuals.

Keywords: homosexual, sodomy laws, America, 1960-1970s

1. Introduction

In the film *Brokeback Mountain*, the story was set in the American West during the 1960s, telling the story of two men who deeply fall in love with each other. Nevertheless, the end of the film is a tragedy, since one of them was killed by a homophobic action. The 1960s are often seen as decade of great progress in racial and gender equality, which is characterized by legislation and social progress that improved the rights of marginalized groups. On the global stage, decolonization improved the rights of disenfranchised peoples; in American society itself, civil rights and feminist movements aided the lives of Black and female Americans. However, another important, though often overlooked, struggle was also taking place: the fight for homosexual rights, which is more normally dated to the 1970s and 1980s. These decades saw the first significant improvement in the legal barriers faced by homosexuals, particularly through changes of anti-sodomy laws that began even before the Stonewall Riots of 1969. In the period of 1960s and 1970s, the rights of homosexuals indeed advanced through the abolition of anti-sodomy laws.

2. Background

Sodomy laws criminalize specific sexual behaviors, usually oral and anal sex, between consenting adults. Though the majority of sodomy statutes criminalize these activities between different-sex partners, sodomy laws always criminalize these forms of sexual activities between same-

sex partners. ^[1] The movement of homosexuality in America initially started at the end of the 1960s, especially the famous Stonewall Movement in 1969. During the 1960s, homosexual behavior, like sodomy, was illegal in most states in America, and police frequently raided gay bars, as well as arrested gay people. The Stonewall Inn was a well-known gay bar in New York City and often targeted by police. However, what different was the police raid on June 28, 1969, which sparked a strong resistance from the customs and nearby residents. ^[2] This movement is believed to be the first collective action by homosexuals to openly resist discrimination. In the years following the Stonewall movement, gay rights organizations and individuals actively challenged laws, including sodomy laws, using the legislative system to fight for equal rights.

3. Secondary source analysis

In the book *Before Lawrence v. Texas: The Making of a Queer Social Movement*, the historian Wesley Phelps explores the evolution of sodomy laws in Texas. In 1979, Dallas gay activist Don Baker filed a lawsuit in federal court, claiming the new homosexual law violated his legal rights. ^[3] This was the first organized and financially supported attempt to challenge the legality of the state sodomy law. This case marked the first time a federal judge abolished a sodomy law based on the constitutional rights of gay individuals. However, despite the initial victory in federal court, the appeals process was quite complex. Policy changes can also spread geographically. A

state is more likely to reform the legislation system if its neighboring states have repealed sodomy laws. Activists often pushed for legal reform in neighboring states based on their successes. For instance, Illinois became the first state to repeal a sodomy law in 1961. This development had great effects on its neighboring state, Wisconsin. Wisconsin passed legislation that repealed its sodomy law in 1983, partially inspired by and motivated by the success of reformation in Illinois.^[4] In addition, the social movement's strategies and alliances with other organizations, also played an important role in the success of the appealing of sodomy laws. The involvement in legal defense and education foundation in sodomy law cases has significantly increased the possibility of legal reform.^[5] What's more, cooperation with non-gay organizations, such as the ACLU^[6], increased the movement's chances of success too. The ACLU has long supported gay rights and actively opposed sodomy laws, providing visible support. The continuous movement of LGBTQ groups indeed gradually dismantled sodomy laws through legal means, which protected the rights of homosexuals.

4. Primary source analysis

Most historians think that the rights of homosexuals had qualitative progress during 1960s-1970s. Nevertheless, many laws just provided protection only to the sexual relations of married couples, but not address the private acts of homosexuals. In response to this limitation, I'll take the Buchanan v. Batchelor case as an example to deeply investigate the rights of homosexuals influenced by laws during that period.

Alvin Buchanan claimed himself a homosexual. In February 1969, Dallas police arrested 37-year-old Alvin Buchanan in a public restroom in Reverchon Park, accusing him of engaging in oral sex with another man. Two months later, Buchanan was arrested again in a department store restroom in downtown Dallas for the same alleged offense. The Dallas County District Attorney charged him under *Article 524*, and in a brief trial in May, State District Judge Ed Gossett sentenced Buchanan to five years in prison.^[7] This judgement shows that homosexuals had still not been acceptable in the aspect of laws. Buchanan's lawyer, Henry McCluskey Jr, decided to use this case to challenge the constitutionality of *Article 524*. They first targeted the illegal surveillance by the police in a federal lawsuit, arguing that the surveillance by the Dallas vice squad in public restrooms violated Buchanan's constitutional rights, including protections against unreasonable searches, due process, and equal protection.^[8]

What's more, Buchanan asked for a three-member court to hear his challenge to the constitutionality of the

law, for the reason that *Article 524* applies not only to the sexual behavior of gay people, but also to the behavior of straight people, including the private behavior of married couples. Buchanan, as an unmarried person, challenged the constitutionality of the law, in part because it placed unreasonable restrictions on the conduct of all people, not just homosexuals. He was not only fight for the group of homosexuals (like himself), but also speak up for the rights of all people. The court stated doubt whether Buchanan was qualified to raise the constitutional rights of married couples alone, but allowed Michael Gibson and his wife, Janet, and Travis Strickland to intervene in the lawsuit to represent the interests of married couples and gays, respectively. However, the court refused to wait for a Texas court to rule on the constitutionality of the law because there was an actual threat of prosecution because 451 arrests had been recorded in the city of Dallas, indicating that the law was being enforced.^[9] This was a great revolt during the fight of homosexual rights. Though ending in failure, it still paved the way for subsequent success of the abolishment of sodomy laws in Texas. In November 1969, the Northern District of Texas federal court heard oral arguments in the case of Buchanan v. Batchelor. McCluskey argued that Texas had "no right to regulate the private consensual conduct of adults."^[10] The court found Section 524 of the Texas Penal Code unconstitutional because it was too broad and violated the privacy rights of married couples.^[11] The ruling was based on the right to marital privacy as affirmed in *Griswold v. Connecticut Case*. The court held that the Act failed to distinguish between public and private conduct, same-sex and heterosexual conduct, and married and unmarried conduct, and was therefore unconstitutionally overbroad in its application to the private conduct of married couples. That was the first time a federal court overturned a sodomy law based on constitutional grounds. Undoubtedly, the abolition of the laws against homosexuals greatly improved the rights of gays, by equipping them with the freedom and rights to have sex.

Nevertheless, while the Buchanan case provided legal protection for the private conduct of married couples, it still did not address the private conduct for homosexuals. The court emphasized that *Griswold v. Connecticut Case* only applied to protect the sexual relations of married couples.^[12] The ruling leaves sodomy laws of most states open to similar constitutional challenges, because most states' sodomy laws do not exclude private acts by married couples. However, the Buchanan case provides the legal basis for similar cases in the future, which may prompt state legislatures to amend sodomy laws to meet constitutional requirements.

5. Conclusion

In conclusion, 1960-1970s is an important period in American history. Various civil and legal campaigns against homophobic discrimination arose, fighting for the rights and equity of gays. The anti-sodomy laws were used as tools to suppress and control the sexual behavior of homosexuals. However, high-profile legal battles, such as *Buchanan v. Batchelor*, showed the invasive and discriminatory nature of these laws to the public. Despite facing significant difficulties in the Supreme Court, these challenges laid the groundwork for future legal victories by establishing privacy rights as a constitutional issue. The struggles during 1960-1980s set the stage for further progress on LGBTQ+ rights and ultimately led to the repeal of these discriminatory laws.

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