

Sexuality and Discrimination

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Sexuality and Discrimination

A Rights and Liberties Perspective

Gilbert Paul Carrasco
PROFESSOR OF LAW
WILLAMETTE UNIVERSITY

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To My Daughter, Micaela Carrasco, With Love

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Preface

This book has been a labor of love for the past decade. It seemed that every time it appeared complete, there was a new development that had to be included. In some cases, it required revisitation of the entire text. The fact is, however, that on this cutting edge of jurisprudence, important developments are ineluctably going to continue to occur. What follows is my best attempt to consider everything that is available at this point in time.

The book is intended primarily for use in the classroom. It is best-suited for law classes, although it is conceivable that it could also be used in other disciplines. Indubitably, it draws on many other disciplines in considering the law of sexuality.

This work is divided into three essential components: Part I deals with discrimination based on sexual orientation; Part II addresses the many legal facets of the AIDS crisis; and Part III considers legal problems associated with pregnancy. The primary focus of the text is the rights of gays, lesbians, bisexuals, and transgendered people. Although there are various causes that give rise to HIV and AIDS, the continuing concern of the gay community led to its inclusion in this text. That being said, the topic is viewed broadly in this book, and an appreciation may be acquired for the crisis from a vantage point that is more encompassing than the disease as it relates to the gay community. The primary concern of many women as related to sexuality is pregnancy, and that has been addressed in the broader context of sexuality. In all aspects of the book, international perspective is brought to the issues, although the primary focus is on the law of the United States.

As to Part I, the introduction explores facts and myths about homosexuality and, importantly, discusses some aspects of representing gays and lesbians from an ethical and tactical perspective. An overview of the few cases that comprise the Supreme Court's nascent jurisprudence in the area is included in the section on the legal environment.

Chapter 1 focuses on gay and lesbian rights in the context of education. The right to organize and be recognized, the right to speak, and simply the right to be, all become germane in educational settings. Variations depending upon the level of education are also explored.

The second chapter takes up the subject of employment discrimination. Many of the military cases and the "don't ask/don't tell" policy have been the fount of the early legal analyses, but subjugation of gays and lesbians is also discussed when adopted as policy by the federal government, by State and local governments, and by private employers.

Housing discrimination is often the result of formalistic definitions of "family." The permutations of discrimination are addressed in that context as well as in the specific context of segregation in prisons, an increasingly common phenomenon.

Chapter 4 involves the most fluid aspect of the law of sexuality. Domestic relations and the issue of same-sex marriage has captured the attention of the nation, but an equally significant issue is access to basic rights and benefits for same-sex couples. Custody, visitation, and adoption are also critically important questions to many gay and lesbian couples.

An issue that has not been as prominent as many others is that of immigration and sexual orientation, which is addressed in chapter 5. The right to immigrate is based largely on familial relationships which, in turn, depend on marital status. Persecution based on membership in a particular social group has been very problematic for gays and lesbians in other countries and has led, in some cases, to asylum and withholding of deportation in the United States.

Unfortunately, the reality of persecution in the United States has grown ugly in more instances than can be counted. Hate crimes continue to be perpetrated against gays and lesbians, often with brutal and sometimes fatal results, and this phenomenon is addressed in chapter 6.

Part II of the text begins with an introduction to the scientific and social dimensions that underlie the civil rights of people with AIDS. Epidemiological myths are dispelled, and the facts are explained.

Chapter 7 focuses on patients with AIDS. The duties of hospitals and physicians to treat, basic access to dental and medical care, and insurance coverage are all issues that people with AIDS must face.

The flip side of the coin is the issue of health care workers who have AIDS, addressed in chapter 8. Testing and confidentiality are major areas of litigation in this setting.

Chapter 9 specifically discusses limitations on disclosure of the fact that a person suffers from the disease. Many States now have statutes that treat HIV and AIDS in a unique fashion.

Questions of the rights of family members with AIDS arise in the context of custody and visitation for divorced people, foster families and AIDS, and child care, all considered in chapter 10.

Chapter 11 discusses discrimination against people with AIDS in employment, housing, and educational contexts. There is overlap among some of the analytical constructs that apply to these areas of the law.

Rounding out the section on the civil rights of people with AIDS is Chapter 12, which addresses a variety of issues in the context of criminal law. The dangers of AIDS are reflected in the jurisprudence that has developed thus far in this area.

Finally, Part III is introduced with a theoretical overview of pregnancy discrimination and a survey of the law of foreign nations. Chapter 13 specifically addresses the Pregnancy Discrimination Act and other issues related to pregnancy.

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If the book brings about increased understanding and amelioration of the subordination and discrimination that it describes, it will have served its purpose. My hope is that it will advance the cause of justice.

G.P.C.

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