LGBT Rights: Overcoming a Colonial Legacy

Professor Leslie Thomas KC

1 February 2024

"It takes no compromise to give people their rights...it takes no money to respect the individual. It takes no political deal to give people freedom. It takes no survey to remove repression".

Harvey Milk

Thank you for joining me today as we delve into the complex and deeply nuanced landscape of LGBT rights in the Commonwealth Anglo-Caribbean. I will not be able to do proper justice to such an important topic in around 45 mins to an hour. I will try my best. However, I wish to acknowledge that this is a topic which demands a delicate balance between recognising the historical influences that have contributed to the persistence of anti-LGBT laws and the lived experiences of those affected, while also acknowledging the diverse cultural and religious tapestry that shapes the region.

It is essential to approach this discussion with an understanding that the journey towards acceptance and equality is neither linear nor universal. As we explore the impact of colonial legacies on restrictive sex laws, it's important to be mindful of the lived realities of the people we discuss, especially in societies deeply rooted in religious traditions.

The discussion surrounding LGBT rights is not a mere clash of liberal ideals from the global north against the values of the global south. Rather, it is a nuanced exploration of how external influences intersect with deeply ingrained cultural norms. It is crucial for us to engage in this dialogue with sensitivity, respecting the autonomy of Caribbean societies to navigate their own paths toward progress and acceptance.

The atrocities faced by the LGBT community, from persecution to homelessness, are undeniable and demand our attention. However, the path to change must be paved with cultural empathy, recognising the significance of religious values to many in the region. Our goal is not to impose external views but to foster a dialogue that allows for understanding, empathy, and a shared commitment to human rights.

Let us embark on this exploration with open minds, acknowledging that progress requires a collaborative effort—one that respects the unique narratives of each society while working towards a future where all individuals, regardless of their sexual orientation, can live free from fear and discrimination.

So, thank you for being part of this important conversation. Let me begin.

This lecture is about LGBT rights in the Commonwealth Caribbean. I will explore the anti-gay laws that the Commonwealth Caribbean inherited from the UK, and the way in which our colonial legacy has shaped homophobia and transphobia in Caribbean countries today. Although the focus of the lecture is on the Caribbean, we will also need to delve deep into the history of persecution of LGBT people in the UK, in order to understand where these laws came from, why they were enacted and why they persist.

The pervasive discrimination, both legal and societal, against LGBT people in the Commonwealth Caribbean is a hangover of our colonial past. Homophobia and transphobia were imposed on us by our former colonial masters. In the last few years, we've seen real progress on LGBT rights in the Caribbean, with courts in a

number of Caribbean countries striking down anti-gay laws as unconstitutional. It is to be hoped that this trend will continue. But there is still a long way to go before we achieve gay and trans liberation in the Commonwealth Caribbean.

In October 2012, there was a debate in the British House of Lords[1] entitled "Treatment of Homosexual Men and Women in the Developing World". During that debate British Parliamentarians condemned Britain's responsibility for laws criminalising 'homosexuality' in its former colonies.

> "*we must remember where the laws criminalising homosexuals in many countries came from. They came from Britain, which alone amount the European empires of the 19th century possessed a criminal code under which homosexuals faced severe penalties just for expressing their love and physical desire for one another. In India in the 1820s, Thomas Macaulay, later the greatest of all the Whig historians, devised a legal system which incorporated Britain's then firm and unbending intolerance of homosexuality. The Indian penal code became the model for the legal systems of Britain's colonies in most of Africa and Asia*."[2]

I suppose the obvious question is how did this happen and more significantly what is the state of play today.

The Historical Context

I start this story by talking about the history of persecution of LGBT people in England and Wales. That is because the former British colonies of the Caribbean received the English common law, and most of their statutes have historically been modelled on English statutes, or on statutes from other British colonies. Although the history is somewhat different in Scotland, I won't be going into Scots law for the purposes of this lecture, because it was generally English and not Scots law that the UK exported to its colonies abroad.

The first English statute criminalising sexual activity between men was the Buggery Act 1533. Before that, it had been within the jurisdiction of the ecclesiastical courts. As part of Henry VIII's policy of reducing the role of the ecclesiastical courts and expanding royal authority, Parliament passed the 1533 Act, which made buggery a capital offence to be tried in secular courts. Originally time-limited, the 1533 Act was made permanent in 1540, repealed in 1547, replaced with a more limited statute in 1548, then repealed again in 1553 in the reign of Mary I, with jurisdiction being restored to the ecclesiastical courts. Finally, in 1562, in the reign of Elizabeth I, Parliament revived the 1533 Act and made it permanent. It remained in force for the next 266 years.[3]

The 1533 Act did not define the term "buggery". However, it was generally understood to include anal sex, not just between two men but also between a man and a woman. No distinction was made between consensual and non-consensual sex. The crime of buggery also included sex between a person and an animal. The term "sodomy" was also used.

Convictions under the 1533 Act were at first rare. According to Jerome Grosclaude, *"By 1641, only three people had been convicted of buggery: Lord Walter Hungerford in 1540, Mervyn Tuchet, 2nd Earl of Castlehaven, in 1631 and, nine years later, the Church of Ireland Bishop of Waterford & Lismore John Atherton."* Grosclaude highlights that these three prosecutions were political, *"used as a means to further discredit men it was deemed urgent to suppress by any means possible for religious or political reasons".*[4]

However, things changed over time. Grosclaude notes that there was increased repression of sodomy from the late 17th century onwards, in part driven by the Societies for the Reformation of Manners, *"religious societies which prosecuted blasphemers, prostitutes, pornographers and buggers".* These societies

---

[1] HL Deb, 25 October 2012, vol. 740, col. 379.
[2] HL Deb, 25 October 2012, vol 740, col. 389.
[3] Paul James, "Buggery and Parliament, 1533-2017" (2019) *Parliamentary History,* 325-341 https://eprints.whiterose.ac.uk/131232/1/Revised_submission_to_Parliamentary_History_WRR_version.pdf
[4] Jerome Grosclaude, "From Bugger to Homosexual: The English sodomite as criminally deviant (1533-1967)." Revue française de civilisation britannique 19.1 (2014): 31-46 https://uca.hal.science/hal-01272782/document

"conducted raids on 'molly houses'".[5] For context, as Mary McKee explains, *"'Molly' was a slur used for effeminate, homosexual men and the term* [molly house] *was adopted to describe the clubs, taverns, inns, or coffee houses where they met up in secret".* She warns that *"we must tread lightly when assigning 21st-century terms to 18th-century culture,"* but notes that *"the descriptions we do find of the 'mollies' and the activities which transpired at Molly Houses does hint at a cross-dressing or drag culture, with some suggestion of trans identities."*[6] As to the response of the courts, Grosclaude says *"The judicial repression was however quite lenient, when one bears in mind that sodomy was a capital offence, and judges usually sentenced to a small fine and a few hours in the pillory for attempted sodomy (since the actual offence was very difficult to prove). Although the pillory was the lightest penalty a judge could impose, such a sentence could have grave consequences for the defendant: in addition to the public humiliation of being thus exposed, mobs were not infrequently known to pelt pilloried offenders with eggs or even stones."*[7]

In 1781, in *Hill's Case* (1781) 1 East PC 649, the English judges decided by a majority that it was necessary to prove the actual "emission of seed", to establish that carnal knowledge had taken place. *Hill's Case* involved rape of a woman, but the same principle applied to buggery. This obviously made prosecutions for buggery, as opposed to attempted buggery, difficult. This was reversed by section 15 of the Offences against the Person Act 1828, which provided that proof of the actual emission of seed was not required, and that penetration was sufficient.

Not all sexual activity between men came within the definition of buggery. In *R v Jacobs* (1817) 168 ER 830 the Court of Crown Cases Reserved held that a man who orally raped a seven-year-old boy was not guilty of buggery. This case illustrates powerfully that the buggery law was not concerned with protecting children or adults from sexual assault; criminalisation turned on the nature of the sex act, not on whether it was consensual.

Meanwhile, England exported the criminalisation of gay intimacy/sex to its colonies abroad. The Indian Penal Code, which codified the criminal laws of India under the British Raj, was drafted by Thomas Babington Macaulay. He completed the work in 1837 but it did not come into force until 1860. Instead of using the term "buggery", Macaulay chose to use new language. His original draft would have criminalised touching a person "intending to gratify unnatural lust". His original draft also distinguished between consensual and non-consensual unnatural offences; both were to be criminalised, but the latter were to be punished more severely.[8]

However, the final version that came into force in 1860 differed considerably from Macaulay's draft. Section 377 of the final Code provided that *"Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life, or with imprisonment … for a term which may extend to 10 years, and shall be liable to fine".* As Human Rights Watch highlights, *"this version went back to the outlines of the old standard of "buggery," replacing the reference to "touching" with the criterion of "penetration." There were still plenty of ambiguities (including the question of what had to penetrate what)… On the other hand, the attempt to organize the offense around the axis of consent/non-consent was dropped. In principle, stipulating that the act had to be "voluntary" meant the victim of forcible "carnal intercourse" could not be criminalized. But the other actor received the same punishment, and was guilty of the same offense, whether the act was forcible or not."*[9]

Section 377 was also exported to many other British colonies.[10]

Back in England, the Offences against the Person Act 1861 abolished the death penalty for buggery; instead, the maximum penalty became penal servitude for life.

---

[5] Ibid.
[6] Mary McKee, "18th Century Molly Houses – London's Gay Subculture," *British Newspaper Archive,* 19 June 2020 https://blog.britishnewspaperarchive.co.uk/2020/06/19/18th-century-molly-houses-londons-gay-subculture/
[7] Grosclaude, op. cit.
[8] Human Rights Watch, "This Alien Legacy: The Origins of 'Sodomy' Laws in British Colonialism," 17 December 2008 https://www.hrw.org/report/2008/12/17/alien-legacy/origins-sodomy-laws-british-colonialism
[9] Ibid.
[10] Ibid.

However, a major change to England's anti-gay laws came with the Criminal Law Amendment Act 1885. This was an Act mainly concerned with protecting young girls by raising the age of consent for heterosexual sex. However, Liberal MP Henry Labouchere tabled an amendment to this Act, the "Labouchere amendment", which criminalised acts of "gross indecency" between men.[11] This was a much broader, albeit less serious, crime than buggery. Any kind of sexual activity between men, consensual or not, was now potentially punishable. The most famous person prosecuted under the Labouchere amendment was, of course, Oscar Wilde, who was convicted of this offence in 1895.[12]

So by the end of the 19th century, any kind of sex act between men was potentially a criminal offence, regardless of their ages, whether it was committed in public or in private, and whether or not it was consensual.

The Sexual Offences Act 1956 re-enacted the criminalisation of buggery and gross indecency between men. However, in August 1954, the Departmental Committee on Homosexual Offences and Prostitution had been appointed, known as the Wolfenden Committee after its chair. Part of the Committee's terms of reference was to consider *"the law and practice relating to homosexual offences and the treatment of persons convicted of such offences by the courts".* When the Committee reported in September 1957, it recommended that homosexual acts between consenting adults in private should be decriminalised.[13]

It took another decade before the Committee's recommendation was implemented. Ultimately, consensual gay sex in private between men over 21 was decriminalised by the Sexual Offences Act 1967, a Private Member's Bill introduced by the Labour backbencher Leo Abse.[14]

What about sex between women? There was never a specific criminal offence of lesbianism as such. But such an offence was very nearly introduced. In 1921, the House of Commons passed an amendment to the Criminal Law Bill which would have criminalised "any act of gross indecency between female persons". The clause was removed from the Bill by the House of Lords. The debate illustrates the extraordinarily homophobic attitudes of the British elite at the time. The Earl of Malmesbury apologised for raising a discussion *"upon what must be, to all of us, a most disgusting and polluting subject,"* but argued that the clause would increase the opportunities for blackmail, that it would be practically impossible to obtain evidence, and that *"The more you advertise vice by prohibiting it the more you will increase it".* The Earl of Desart similarly argued that the results of a prosecution would be *"appalling",* in that *"It would be made public to thousands of people that there was this offence; that there was such a horror".* He added *"How many people does one suppose really are so vile, so unbalanced, so neurotic, so decadent as to do this? You may say there are a number of them, but it would be, at most, an extremely small minority, and you are going to tell the whole world that there is such an offence, to bring it to the notice of women who have never heard of it, never thought of it, never dreamed of it."* The Lord Chancellor asserted *"I would be bold enough to say that of every thousand women, taken as a whole, 999 have never even heard a whisper of these practices".*[15]

Lesbianism was not specifically criminalised, seemingly because the establishment feared that criminalising it would raise awareness of its existence. However, this does not mean that lesbians were free of legal persecution. Radclyffe Hall's groundbreaking lesbian novel The Well of Loneliness, about female ambulance drivers in the First World War, resulted in an obscenity trial in November 1928. The Chief Magistrate held the book to be obscene and ordered that it be destroyed. It was not published again for another 20 years.[16]

---

[11] UK Parliament, "1885 Labouchere Amendment" https://www.parliament.uk/about/living-heritage/transformingsociety/private-lives/relationships/collections1/sexual-offences-act-1967/1885-labouchere-amendment/

[12] Human Rights Watch, "This Alien Legacy: The Origins of 'Sodomy' Laws in British Colonialism," op. cit.

[13] Report of the Committee on Homosexual Offences and Prostitution (the Wolfenden Report), Cmnd 247, September 1957 https://www.humandignitytrust.org/wp-content/uploads/resources/Wolfenden_Report_1957.pdf

[14] Grosclaude, op. cit.

[15] Hansard, HL Deb 15 August 1921 vol 43 cc567-77 https://api.parliament.uk/historic-hansard/lords/1921/aug/15/commons-amendment-2

[16] Mollie Clarke, "'I need never have known existence': Radclyffe Hall and LGBTQ+ visibility," *The National Archives Blog,* 29 April 2021 https://blog.nationalarchives.gov.uk/i-need-never-have-known-existence-radclyffe-hall-and-lgbtq-visibility/

I mention this because it is important not to assume that lesbians had it easier than gay men; their experiences were different, but they too were persecuted.

Finally, we need to turn to the persecution faced by trans people.

But before we get to the present day, let's talk about the historical treatment of trans people. The historian Zoe Playdon has uncovered the story of Ewan Forbes, a trans man born to an aristocratic family. According to Playdon, whose findings are summarised by Patrick Strudwick in an article for *The i,* up until the 1960s trans people who had had gender confirmation surgery were permitted to change their birth certificates. Ewan Forbes was one man who did so. The problem came in 1965, when Forbes' older brother died and Forbes inherited a hereditary baronetcy, which could only passed down the male line. A cousin challenged the succession on the basis that Forbes was not male. In 1968, in secret proceedings, Forbes won the case and was declared the rightful holder of the baronetcy. But Playdon states that this caused a *"constitutional crisis".*[17]

As Strudwick writes, *"the effect on trans people had already been dramatic. In 1970, April Ashley, who had become the first well-known trans woman in Britain after being outed by a tabloid, was seven years into her marriage with the aristocrat Arthur Corbett. But it was failing. Rather than divorce her and give her money, Corbett attempted to have the marriage annulled, asserting that she was male…. The judge sided with the aristocrat and swore the lawyers to secrecy about the Forbes trial. During Ashley's case, the judge "creates a sex test which dis-authenticates her," says Playdon. Ashley was subjected to the most invasive genital examinations imaginable – twice – because after the expert clinicians concluded that she "had a perfectly usual vagina" the judge demanded they look again."*[18]

That judgment is *Corbett v Corbett* [1971] P 83, stood as the leading authority on the meaning of sex in English law for more than three decades despite its transphobic nature. Mr Justice Ormrod held that the marriage of Corbett and Ashley was void. In so holding, he sought to define a person's sex in the eyes of the law; he held that the law should adopt three tests. The first was chromosomal factors; the second was gonadal factors (i.e. the presence or absence of testes or ovaries); and the third was genital factors. Accordingly, a trans person could not change their legal sex by taking hormones or having gender reassignment surgery. This effectively denied trans people any legal recognition at all.

Three decades later, when attitudes had changed somewhat, the matter came before the European Court of Human Rights in *Goodwin v United Kingdom* (2002) 35 EHRR 18. The applicant, a trans woman, challenged the failure of UK law to allow her to change the gender on her birth certificate or to recognise her as a woman. This had numerous impacts on her, which were not limited to marriage. She was treated as a man for the purposes of social security, employment and pensions. This meant that her state pension age was 65 rather than 60; that didn't just put her in a less advantageous position financially, but also risked outing her to her employer. She had also been sexually harassed at work and had not been accorded adequate legal protection. The Strasbourg Court held that the lack of legal recognition of her gender constituted a breach of her rights under Article 8 of the Convention, the right to private and family life, and Article 12, the right to marry and found a family.

Shortly afterwards, in *Bellinger v Bellinger* [2003] 2 AC 467, the House of Lords decided that section 11(c) of the Matrimonial Causes Act 1973, which made a marriage void if the parties were not respectively male and female, was incompatible with the Article 8 and 12 rights of trans people. A declaration of incompatibility was made. A declaration of incompatibility under the Human Rights Act 1998 does not change the law, but instead serves as a signal to Parliament that it needs to change the law to bring it into line with the Convention.

Parliament did change the law. The Gender Recognition Act 2004 allowed trans people to obtain legal recognition of their change of gender for the first time. However, the 2004 Act is rightly viewed as unsatisfactory by most trans people. Trans people can't change their legal gender as of right; it is subject to

---

[17] Patrick Strudwick, "The secret court case 50 years ago that has robbed transgender people of their rights ever since," *The I,* 10 November 2021 https://inews.co.uk/news/long-reads/secret-court-case-50-years-ago-robbed-transgender-people-rights-1291857

[18] Ibid.

a decision by a "Gender Recognition Panel" which decides whether or not to permit the change. A medical diagnosis of gender dysphoria is required. In this way, trans people's right to legal recognition is medicalised. It's an intrusive, cumbersome and bureaucratic process, and means that many trans people are denied the security of legal recognition.

The Commonwealth Caribbean

The Commonwealth Caribbean inherited the UK's anti-gay laws. The exact wording of the statutes varies between jurisdictions. A 2018 report by Human Rights Watch gives a helpful overview of the laws in the Eastern Caribbean at that time:

"In the seven countries covered in this report there is no consistent definition of "buggery" or the penalties imposed. Antigua and Barbuda and Dominica define buggery as "anal intercourse by a male person with a male person or by a male person with a female person." Most countries, including Barbados, St. Lucia and St. Vincent and the Grenadines, leave it undefined, specifying only the prison terms to be imposed. St. Kitts and Nevis criminalizes "sodomy and bestiality" and defines the term by referencing "the abominable crime of buggery, committed either with mankind or with any animal." Grenada has the most open-ended provision, criminalizing "unnatural connexion," which is undefined and has been interpreted in past case law to include consensual anal intercourse between same-sex persons. Barbados has the most severe punishment: life imprisonment. Dominica grants courts the power to order that "the convicted person be admitted to a psychiatric hospital for treatment" and St. Kitts and Nevis allows courts to add "hard labor" in the final judicial decision."[19]

As Human Rights Watch rightly highlights, these laws do not distinguish between consensual and non-consensual sex; contrary to what is sometimes asserted by Caribbean politicians, they are not about protecting people from rape.[20]

Some people defend these laws by saying that consensual gay sex is rarely prosecuted in the Caribbean. But that is not the point. As Human Rights Watch says of Jamaica's laws against buggery and gross indecency:

"…the laws have a real and negative impact. Criminalizing sexual intimacy between men offers legal sanction to discrimination against sexual and gender minorities, and in a context of widespread homophobia, gives social sanction to prejudice and helps to create a context in which hostility and violence is directed against LGBT people.

The laws have been used by police to extort money from adults engaged in consensual homosexual sex; by public television stations to justify refusal to air public service announcements making positive statements about LGBT persons; and by landlords to justify refusal to rent apartments to them. Though those arrested are rarely if ever prosecuted, gay men who are "outed" through arrest risk violence and other abuse by community members."[21]

Nor is it only gay men who are the targets. Human Rights Watch notes, again in relation to Jamaica:

> *"While the law does not directly reference transgender people, transgender women and homosexuals are often conflated. Gender non-conforming Jamaicans, especially transgender women and gender non-conforming gay men who are publicly visible, are most likely to suffer violence and discrimination.*
>
> *Same-sex relations between women are not criminalized in Jamaica. However, lesbians and*

[19] Human Rights Watch, "'I Have to Leave to Be Me': Discriminatory Laws against LGBT People in the Eastern Caribbean," 21 March 2018 https://www.hrw.org/report/2018/03/21/i-have-leave-be-me/discriminatory-laws-against-lgbt-people-eastern-caribbean

[20] Ibid.

[21] Human Rights Watch, "Not Safe At Home: Violence and Discrimination against LGBT People in Jamaica," 21 October 2014 https://www.hrw.org/report/2014/10/21/not-safe-home/violence-and-discrimination-against-lgbt-people-jamaica

bisexual women are stigmatized and subjected to violence, including sexual violence…"[22]

From a legal perspective, there has been some real progress in the last few years. In a number of jurisdictions, the courts have struck down the criminalisation of same-sex sexual activity as unconstitutional. The Supreme Court of Belize held that Belize's law against "unnatural carnal knowledge" was unconstitutional in *Caleb Orozco v Attorney General* (2016) 90 WIR 161. The High Court of Trinidad and Tobago struck down laws against buggery and serious indecency in *Jason Jones v Attorney General* TT 2018 HC 137. The High Court of Barbados followed suit in *René Holder-McLean-Ramirez v Attorney General* BB 2023 HC 17. The Eastern Caribbean High Court struck down the criminalisation of buggery and attempted buggery in St Kitts and Nevis in *Jamal Jeffers v Attorney General* SKBHCV2021/0013, and the criminalisation of buggery and serious indecency in Antigua and Barbuda in *Orden David v Attorney General* ANUHCV2021/0042. Anti-gay laws in the Commonwealth Caribbean are falling like dominoes.

Another judgment on LGBT rights, which I have mentioned in a previous lecture, is *McEwan v Attorney General* [2018] CCJ 30 (AJ). That is a decision of the Caribbean Court of Justice in its capacity as the highest court of Guyana. I talked in a previous lecture about how some, but not all, Caribbean jurisdictions have replaced the Privy Council with the Caribbean Court of Justice as their highest court.

The *McEwan* case concerns a group of trans people who were arrested and prosecuted under an archaic colonial law for "wearing female attire in a public place for an improper purpose". Extraordinarily, the magistrate who sentenced them told them that they should go to church and give their lives to Jesus Christ. They brought a constitutional challenge. Ultimately, the Caribbean Court of Justice held that the statute was unconstitutional. In so doing, the Court considered the history of the law against cross-dressing:

"The prohibition against cross-dressing for an improper purpose was enacted in Guyana in 1893, towards the end of the 19th century. The law was part of a suite of laws enacted against vagrancy. These laws were passed in the post-emancipation period, both in the Caribbean and in the United States, to cope with the paradigm shift in the mode of production from slavery to free labour. The laws were designed to regulate and exercise control of both the ex-slave population and, in places like Guyana, the newly imported indentured labourers. The objective was to curtail mobility, to keep close to the plantations those whose labour was essential for continued exploitation. Legal coercion became indispensable to maintaining a ready source of cheap labour in the emerging free labour system. The laws, which also regulated gender and religion, were rigorously enforced by magistrates and police."

This is a hugely important point. This history highlights that the criminalisation of LGBT people in Britain's Caribbean colonies has its roots in a system of colonial social control, designed to serve the interests of our former colonial masters. Many Caribbean politicians today suggest that LGBT rights are contrary to Caribbean values, or even a colonial imposition. But it is actually these homophobic and transphobic laws that are colonial impositions.

The Court in *McEwan* went on to hold that the "savings clause" of the Constitution of Guyana did not save the colonial statute from unconstitutionality. I've already discussed savings clauses at length in previous lectures, particularly in the context of the death penalty, so I won't repeat that discussion here. But in brief, "savings clauses" are found in many Commonwealth Caribbean constitutions. They vary widely in their scope, but to a greater or lesser extent, they immunise from constitutional challenge laws which existed prior to the commencement of the constitution. As I explained in a previous lecture, the Caribbean Court of Justice has in recent years adopted a more limited interpretation of savings clauses than has the Privy Council.

So, we can see that the winds of change are blowing in the Caribbean, and that laws which criminalise LGBT people are being struck down as unconstitutional. However, we are a very long way from achieving LGBT equality. Just because LGBT people are no longer criminalised in some jurisdictions does not mean they are treated equally. Same-sex marriage remains illegal in the Commonwealth Caribbean, and legal protections against discrimination in employment and service provision are lacking. Nor has any Commonwealth Caribbean country adopted laws allowing trans people to change their legal gender. It's likely that, were the matter to come before them, Commonwealth Caribbean courts today would still follow the *Corbett* judgment.

[22] Ibid.

And while laws can change, changing the culture takes a lot longer. Human Rights Watch has written powerfully about the experience of societal discrimination faced by LGBT people in the Eastern Caribbean. The report states:

"[In St Kitts] [f]ew LGBT people come out of the closet, fearing the entire island will know. Gay people feel isolated and some fear harassment and violence – beatings, glass bottles thrown at them. Most of the men Human Rights Watch spoke with on St. Kitts had seriously contemplated suicide."[23]

Human Rights Watch interviewed Rosa, a lesbian activist in St Kitts. As the report says:

"People in Rosa's community on St. Kitts didn't believe that she's really a lesbian. They thought that, because she was raped as a teenager, her fear of men made her gay….

Life on St. Kitts can be awful for gay men. They are frequently harassed, threatened, attacked, tossed out of their homes, and abandoned by their families for being gay. One time, Rosa walked down the street with a gay man, and a group of guys started yelling insults at her friend…

Life is not easy for transgender women either. Another friend of Rosa's, who had lived openly as a trans woman in the United States but was deported back to St. Kitts, "has had to dial it back," she said."[24]

The report also interviewed Barry, a closeted gay man serving in the Antiguan police force:

"Most days, Barry hears his fellow officers make homophobic slurs. "They say that [gays] should be locked up, that they're nasty, that they don't know how a man could kiss a man." One supervisor called being gay "an abomination".

He also knows that some officers don't take crimes against LGBT people seriously. Like the time a transgender friend of Barry's was stabbed and badly wounded. The police refused to help her. Instead, behind her back, Barry heard them call her "antiman," a derogatory term, and "disgusting." Another friend, also a trans woman, was beaten so badly by a policeman that she practically lost sight in her right eye…

He was aware that if people knew he was gay, he could be attacked. He also feared eviction from his rented home. And he was afraid of what his colleagues would think, of what they suspected. "Even though they show me respect in my presence, when my back is turned, they talked," he said."[25]

While Caribbean societies have changed and are changing, they remain predominantly Christian and socially conservative. Those of us who are heterosexual and cisgender in the Caribbean, and who are lucky enough to have platforms of influence, need to use what power we have to change the Caribbean culture for the better on LGBT rights. We need to recognise that homophobia and transphobia in the Caribbean are a hangover from our colonial past, and we need to shake off those influences.

Despite the UK Government's vaunted commitment to LGBT rights, same-sex marriage is not even legal in all of the UK's overseas territories. Bermuda and the Cayman Islands have civil partnerships but not same-sex marriage, while Anguilla, the British Virgin Islands, Montserrat and the Turks and Caicos Islands have no provision for recognition of same-sex relationships.[26]

There have been two unsuccessful constitutional challenges on this issue. In *Chantelle Day v Governor of the Cayman Islands* [2022] UKPC 6 the Privy Council held that the lack of same-sex marriage in the Cayman Islands did not breach the Cayman Islands Constitution. The Court of Appeal in the same case declared that the absence of civil partnerships for same-sex couples was unconstitutional, which was not appealed, and in response the Cayman legislature passed the Civil Partnership Law 2020 which allowed for civil partnerships. However, the appellants appealed to the Privy Council on the issue of marriage, and lost. Similarly, in *Attorney-General for Bermuda v Roderick Ferguson* [2022] UKPC 5 the Domestic Partnership

[23] Human Rights Watch, "Paradise Lost: The Plight of LGBT People in the Eastern Caribbean," 21 March 2018 https://www.hrw.org/video-photos/interactive/2018/03/21/paradise-lost
[24] Ibid.
[25] Ibid.
[26] House of Commons Library, "Same-sex marriage in the UK's Overseas Territories," 4 April 2022 https://commonslibrary.parliament.uk/same-sex-marriage-in-the-uks-overseas-territories/

Act 2018 in Bermuda, which legalised domestic partnerships for same-sex couples but denied them the right to marry, was upheld as constitutional.

I can see that the UK Government might understandably be reluctant to override the wishes of the local legislatures of overseas territories; doing so might well be regarded as a colonial imposition. But the UK Government has no compunction about overriding the local legislature when it considers the issue important enough. In 2022, the UK Government vetoed a Bill passed by the Bermuda legislature that would have legalised recreational cannabis. This shows the priorities of the Conservative Government; it's willing to impose its will on overseas territories in order to continue its failed War on Drugs – but not in order to extend rights to same-sex couples.

Conclusion

To conclude this lecture, it is evident that a significant transformation is imperative. Those Commonwealth Caribbean jurisdictions persisting with archaic laws criminalising buggery, gross indecency, or similar offences should, without reservation, undertake their repeal. Courts, in their role as guardians of justice, should persist in striking down these laws as unconstitutional, recognizing their roots in a legacy of social control imposed by former colonial masters, crafted not for the benefit of Caribbean people, but to serve imperial interests.

While advocating for the dismantling of these legal barriers, it is essential to broaden our vision for the future of LGBT rights in the Caribbean. Campaigning for progressive changes, including the introduction of same-sex marriage, legal protections against discrimination in employment and service provision, and the opportunity for trans individuals to change their legal gender, is paramount. These legal amendments are vital steps, addressing the systemic inequalities that persist in the shadows of outdated legislation.

However, the transformation we seek goes beyond the confines of legal frameworks. We must embark on the more arduous journey of cultural change. Legislation alone may not suffice in eradicating the deeply ingrained prejudices leading to the persecution faced by LGBT individuals today. It requires a collective effort to challenge societal norms, fostering understanding, empathy, and acceptance.

It is a call to action for all—activists, policymakers, and citizens alike—to contribute to a cultural shift where diversity is not only tolerated but celebrated. Changing hearts and minds is an ongoing process, one that necessitates open dialogue, education, and a commitment to dismantling ingrained biases.

Ultimately, our shared aspiration is for LGBT individuals in the Commonwealth Caribbean to genuinely relish equal rights—rights free from persecution, discrimination, and the shadows of colonial legacies. In cultivating an environment that respects and values diversity, we move closer to a future where every individual, regardless of their sexual orientation or gender identity, can thrive as equal members of society.

So, may this journey toward equality be marked not only by legal reforms but by a profound shift in societal attitudes, fostering a landscape where everyone can live authentically and unapologetically.

Let me finish with a quote:

"*Love is the only force capable of transforming an enemy into a friend. In our journey for equality, let love be our guide, breaking down barriers and illuminating the path to acceptance for all*." - Bayard Rustin