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THE LEGACY OF BRITISH RULE ON LGBT RIGHTS IN JAMAICA AND THE  
CAYMAN ISLANDS

by

Zachary Alex Stewart

A Thesis  
Submitted to the Graduate School,  
the College of Arts and Letters,  
and the Department of Political Science, International Development, and International  
Affairs  
at The University of Southern Mississippi  
in Partial Fulfillment of the Requirements  
for the Degree of Master of Arts

December 2017

THE LEGACY OF BRITISH RULE ON LGBT RIGHTS IN JAMAICA AND THE

CAYMAN ISLANDS

by Zachary Alex Stewart

December 2017

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THE UNIVERSITY OF  
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## ABSTRACT

### THE LEGACY OF BRITISH RULE ON LGBT RIGHTS IN JAMAICA AND THE CAYMAN ISLANDS

by Zachary Alex Stewart

December 2017

This thesis explores the relationship between British colonial influence and Lesbian, Gay, Bisexual, and Transgender (LGBT) rights in the Caribbean. Comparing the Cayman Islands, a British Overseas Territory, and Jamaica, an independent former colony of the United Kingdom, the situation for LGBT people is evaluated. While Jamaica has serious abuses and a concerning situation for the human rights of LGBT people, the Cayman Islands' LGBT community's position is far less concerning. Owing to its continued connection to the United Kingdom of Great Britain and Northern Ireland, the Cayman Islands' LGBT rights situation is much less dire. Through British influence via funding of human rights initiatives, the use of orders-in-council to alter local law in the territory, the application of European court rulings, British control of the police force, and other factors, the United Kingdom's connection to the British Overseas Territories such as the Cayman Islands has helped to spread its human rights agenda to these territories.

## ACKNOWLEDGMENTS

My graduate advisors, Dr. Tom Lansford and Dr. Robert Pauly, have made an incredible impact on my studies. This thesis and the experience I have gained as a graduate student could not have been possible without them. Each of them has been patient and provided me with the tools I need to succeed. They have provided me with wonderful academic opportunities, such as the ability to become a published contributing author for Dr. Tom Lansford's work, *the Political Handbook of the World*. Thank you both.

## DEDICATION

This Thesis is dedicated to those who have guided and encouraged me through my education and acted as mentors. My parents, Jeffrey Stewart and Lindy Stewart, have been loving and supporting throughout my life and have given me the strength and confidence to pursue this path. I would like to especially acknowledge my mother, who has cared for me during my recent illness, and has been supportive of my goals. My undergraduate advisor, Dr. Douglas Bristol, encouraged me to become involved in my campus community and acted as a mentor to me. My leadership of the Alliance for Equality, the first LGBT rights student organization on campus and being elected President of the Student Body for the University of Southern Mississippi Gulf Park, could not have been accomplished without him. I would also like to acknowledge my supervisors for my graduate assistantship. Dr. Michele Williams taught me much of what I know about tutoring and education. Jensa Besse, my current supervisor, has been supportive and caring. She has always gone above and beyond to assist and encourage me. Thanks to all of you for your support.

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## CHAPTER I - INTRODUCTION

There are numerous political, economic, historical and social factors that can affect the human rights agenda of a particular nation or territory. Connections to another state via historical or political ties can have significant effects on a state's human rights agenda as it relates to LGBT people. In recent years LGBT rights has come to the forefront of international debate and discussion regarding the diverging policies of the Western states and their former colonies. The legacy and potential effects of colonialism across much of the world, specifically, Africa, Asia, Caribbean states, has also become a prominent topic of scholarly debate. Whether the net effect of these regions' colonial history is of benefit or detriment as a whole is a broad and complicated series of questions to answer. This examination does not seek to offer any explanation for these global trends or historical tendencies, but instead inspects the relationship of two particular states that both have historical, political, and social ties to their former colonizer.

The United Kingdom is historically one of the most widespread and populous Empires to ever spread across the globe. At its height in 1920, the British Empire spanned across 35.5 million square kilometers.<sup>1</sup>In 1890, 43% of employed Britons had a job in industry. These jobs were largely fueled by raw goods and agricultural production sourced across the vast British Empire. From 1820-1913 the Empire expanded across Africa, the Caribbean, the Middle East, South and Southeast Asia, as well as the Pacific. Britain established formal colonies, as well as beneficial relationships such as

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<sup>1</sup>Rein Taagepera, "Expansion and Contraction Patterns of Large Polities: Context for Russia," *International Studies Quarterly* 41, no. 3: 502. JSTOR 2600793;

protectorates with nominally sovereign states that benefited Britain. British goods and banking enjoyed a practical monopoly in many of the colonies and protectorates. The Empire was composed of 412 million people spread across all continents by 1913, including 1.6 million located in the Caribbean colonies, holdovers of the United Kingdom's formerly larger holdings in the Americas.<sup>2</sup>

Britain ruled the English speaking Caribbean, or British West Indies, for over 400 years. Beginning in the 1700s, Britain implemented a plantation economy across its Caribbean islands. Largely reliant upon slaves for labor, the sugar cane industry took hold amongst these islands. This economic and social structure impacted British control of and relations with these island states.<sup>3</sup>

Jamaica, Trinidad and Tobago, Barbados, and other Caribbean states with a legacy of British colonialism in the Caribbean region have black majorities as a result of this plantation economy. Sugarcane, introduced during the colonial era for production on plantations, is still a mainstay of the Jamaican economy. While tourism and other sectors of the economy have increased, unlike the Cayman Islands, Jamaica retains its agricultural roots from its time as a source of sugar for the British Empire.<sup>4</sup>

This Thesis examines the effect of a British Overseas Territories' connection to the mother country on LGBT rights as compared to a former colony that is now independent. Rather than examining all current and former British territories in the

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<sup>2</sup> Angus Maddison, "The World Economy: A Millennial Perspective (PDF)," *Organisation for Economic Co-operation and Development*: 92-97. ISBN 92-64-18608-5.

<sup>3</sup> Ezekiel, Rediker, "Courts of Appeal and Colonialism in the British Caribbean: A Case for the Caribbean Court of Justice," *Michigan Journal of International Law*, Fall 2013, Vol. 35 Issue 1, p213-251.

<sup>4</sup>Tom Lasford, ed., *Political Handbook of the World, 2016-2017* (Thousand Oaks, CA: Sage Publishing, 2017), 759.

Caribbean, two broadly comparable states were chosen. The Cayman Islands, a British Overseas Territory, and Jamaica, a former British colony, are both West Indian states located in the Western Caribbean, sharing historical, cultural, and political connections. The Cayman Islands were formerly a dependency of Jamaica during its time as a colony of the United Kingdom. When Jamaica chose independence in 1962, the Cayman Islands chose to retain its links to the United Kingdom and become a dependent territory. This diverging path more than a half century ago has undoubtedly left its mark on the two nations.

In particular, LGBT rights have diverged considerably between the two. While the Cayman Islands, as a British Overseas Territory, are still subject to Orders in Council from the United Kingdom and has a government headed by a British appointed governor,<sup>5</sup> while Jamaica is an independent nation, not subject to the laws or rulings of the United Kingdom.

While there is not any literature specifically comparing the LGBT rights situation in Jamaica and the Cayman Islands through the lens of British colonialism and the effects of the latter as a dependent nation of the United Kingdom, there is research that examines the issue of British colonialism, its ties to LGBT rights legislation and culture, and the LGBT rights situation in Jamaica and other Caribbean nations. In recent decades there has been a flourishing of information published regarding both colonialism and LGBT studies.

The purpose of this paper is to examine the relationship between British authority and the treatment of LGBT persons in the Cayman Islands and Jamaica and determine

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<sup>5</sup> Cayman Islands Constitution Order 2009, part 2, sec. 29-31.

what differences exist based on their status as independent or dependent nations. In order to accomplish this, a qualitative approach was chosen. Qualitative data relies on in-depth descriptions rather than numerical data. According to Gray et. al., a qualitative approach can capture subtleties and provide a more thorough interpretation of the phenomenon being described.<sup>6</sup>

The issue of the United Kingdom's relationship with its former and current colonies or territories as it relates to LGBT rights presents an interesting area of examination within both LGBT studies and post-colonial studies. Has the Cayman Islands' continued relationship with the United Kingdom led to a more favorable situation for its LGBT community as compared to Jamaica? Both of these nations have been impacted by their colonial relationship with the United Kingdom. The Cayman Islands continued connection to the mother country has provided protections to its LGBT community not afforded to those in Jamaica.

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<sup>6</sup> Paul S. Gray, John B. Williamson, David A. Karp, and John R. Dalphin, *The Research Imagination: An Introduction to Qualitative and Quantitative Methods*, (New York: Cambridge Press, 2007), 42.

## CHAPTER II- METHODOLOGY

According to Van Evera, tests can come in two forms: experiments, which test phenomenon in a controlled setting, or observations, which are less controlled.

Observations themselves can be broken down into two categories: large-N analysis that compile many data points and case-studies that examine a single or few instances or circumstances of an event or category in-depth.<sup>7</sup> Van Evera identifies three main formats for testing theories, among these is the use of controlled comparisons. These controlled comparisons are used when comparing two or more cases in order to test if the results are congruent or incongruent with the prediction of the theory identified.<sup>8</sup> John Stewart Mill's *A System of Knowledge* establishes the "method of difference" whereby the scholar selects cases with general characteristics that are similar but that differ in the value of the variable whose cause or effect is being sought.<sup>9</sup> Yin lays out the conditions in which one would use a case study in *Case Study Research: Design and Methods*. Here he describes how questions of 'how' or 'why' are more suited to the application of case study analysis. Rather than creating a predictive model for certain outcomes, case studies examine causes and are more explanatory in nature.<sup>10</sup>

In this particular instance, a case study was thus warranted. The query at hand, the relationship between British rule and LGBT rights in the Caribbean, is a question that is

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<sup>7</sup> Steven Van Evera, *Guide to Methods for Students of Political Science*, (Ithaca: Cornell University Press, 1997), 50.

<sup>8</sup> Steven Van Evera, *Guide to Methods for Students of Political Science*, (Ithaca: Cornell University Press, 1997), 56-57.

<sup>9</sup> John Stewart Mills, *A System of Logic*, ed. J.M. Robson (Toronto: University of Toronto Press, 1973), 388-406.

<sup>10</sup> Robert K Yin, *Case Study Research: Design and Methods*, 2<sup>nd</sup> ed (Thousand Oaks: Sage Publications, 1994), 5-7.

most suited to the case study application. As mentioned previously, examinations of a global nature have already been conducted on the topic of the United Kingdom's exportation of its sodomy laws overseas. Rather than examining the relationship between the United Kingdom and all of its former and current territories across the globe, this paper will examine in-depth, the LGBT rights situation and their relationship with the United Kingdom in two particular nations with comparable histories.

### Why the Cayman Islands and Jamaica?

Using a comparative case study approach, the situation for LGBT persons in both the Cayman Islands and Jamaica can be examined. Since both nations have an interrelated history, geographic location, and culture, they are natural fits for this kind of examination. However, there are distinctions such as economic condition and demographics that should be noted when comparing the two as well.

The history of Jamaica and the Cayman Islands is closely intertwined. The Cayman Islands were a dependency of the British colony of Jamaica for much of their history. When the government of Jamaica chose independence in 1962, the Cayman Islands opted to remain a dependency of the United Kingdom. Thus, until 1962, the legal systems and laws of the Cayman Islands and Jamaica were closely related and both heavily influenced by the United Kingdom.<sup>11</sup>

The geographic location of both nations also lends to the ease of their comparison. The Cayman Islands are located 167 miles to the northwest of Jamaica. Both are located within the Western Caribbean. The Cayman Islands are part of the Cayman Ridge, a

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<sup>11</sup> Cayman Islands Government, "About Cayman: History," Last updated October 13, 2005, <http://www.gov.ky/portal/page/portal/cighome/cayman/islands/history>

partially submerged mountain range that extends from Eastern Cuba to the west, with the three Cayman Islands forming flattened peaks jutting above the ocean. The close proximity between the two has led to close cultural and political ties.<sup>12</sup>

These geographic and historical ties lend themselves to a shared culture. With a shared British heritage, both nations speak a version of English. They have similar religious demographics as well, as Protestant-majority nations. In the Cayman Islands, Anglicans compose 5.8 percent of the population while Catholics compose 14 percent of the population. Protestant churches hold 58.4 percent combined, while Non-Denominational and other Christians are 14.4 percent of the population. Catholics and Anglicans make up a smaller proportion of the population of Jamaica with 2.6 percent and 3.6 percent of the population respectively. Jamaican Protestants make up 59.3 percent of the population combined, while those that are unaffiliated or of an unidentified denomination are 30.8 percent of the population. Not only are there religious and linguistic connections between the two nations, but they are demographically intertwined as well. 24.1 percent of Caymanian residents were born in Jamaica and 21.8 percent have Jamaican citizenship.<sup>13</sup>

The political systems of each nation are very interrelated as well. Both governmental systems share a common link to and origin in the British Westminster system. Both island nations share Queen Elizabeth II as their head of state, along with

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<sup>12</sup> Cayman Islands Government, "Location and Geography," last updated August 4, 2011, <http://www.gov.ky/portal/page/portal/cighome/cayman/islands/locationgeography>

<sup>13</sup> CARICOM, "National Census Report 2001, Jamaica," *Caricom Capacity Development Programme: 2000 Round of Population and Housing Census Data Analysis Sub-Project*, <https://www.caricomstats.org/Files/Publications/NCR%20Reports/Jamaica.pdf>  
Cayman Islands Government, "The Cayman Islands' 2010 Census Report," [http://www.eso.ky/UserFiles/File/4\\_%20Demography%20Tables\(2\).pdf](http://www.eso.ky/UserFiles/File/4_%20Demography%20Tables(2).pdf)



many other territories and independent states in the Caribbean region.<sup>14</sup> The Cayman Islands, while a dependency of Jamaica, were allowed to construct a native governing system that was established in 1831. The Cayman Islands' political link to Jamaica was formally established in 1863 and then severed in 1962 upon Jamaica's independence, providing nearly a century of the Cayman Islands officially styled as a dependency of Jamaica.<sup>15</sup>

However, these connections were not completely severed upon Jamaican independence. To the current time, Jamaica and many other former British colonies in the Caribbean still utilizes the Judicial Committee of the Privy Council in the United Kingdom as its court of last appeal, continuing the historical legacy of British legal supremacy over the island nation. However, Barbados, Belize, Guyana and other Caribbean states have moved toward a new court, the Caribbean Court of Justice, in order to replace the Judicial Committee of the Privy Council, a vestige of the region's colonial past. This has been used by the United Kingdom to influence the legal situation in these states via the Committee. The United Kingdom, which has a far different social and political climate surrounding human rights issues, has used the Judicial Committee of the Privy Council to spread its interpretation of human rights to its former territories. The United Kingdom, which has abolished the death penalty, has used the Committee to issue a 5 year wait limit on the time between conviction and execution and has annulled Jamaica's mandatory death penalty for murder. This shared legal and judicial legacy that

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<sup>14</sup> Tom Lasford, ed., *Political Handbook of the World, 2016-2017* (Thousand Oaks, CA: Thousand Oaks, CA, 2017), 759.

<sup>15</sup> Cayman Islands Government, "History," last updated October 13, 2005, <http://www.gov.ky/portal/page/portal/cighome/cayman/islands/history>

persists to the present between the Cayman Islands and Jamaica via the United Kingdom makes them broadly comparable in their laws and judicial interpretations. The two states both retain links to the United Kingdom's judicial branch and have a shared common law legacy stemming from this.<sup>16</sup>

As mentioned, although these historical, geographic, cultural, and political conditions are shared by both nations, there are differences present that differentiate the two. The racial and national demographics of each nation, economic situation and size, and population demographics and size, all distinguish the two. These largely have to do with a matter of scale, as the Cayman Islands are a small group of islands of 102 square miles, compared to Jamaica's 4,182 square miles.<sup>17</sup>

The two nations differ greatly in their population. Jamaica contains 2,970,340 residents, while the Cayman Islands contain 53,834 residents. This makes Jamaica more than fifty-five times more populous than the Cayman Islands. Not only do the two populations differ in size, but they also contain differing demographics regarding their racial and national makeup. Foreign-born residents make up less than one percent of the population of Jamaica. However, this group makes up a majority in the Cayman Islands of 62.2 percent of the population. 44.8 percent of the population of the Cayman Islands do not hold Caymanian citizenship. Racial and ethnic demographics differ significantly as well. Black Jamaicans make up an overwhelming majority of 91.6 percent in Jamaica,

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<sup>16</sup> Ezekiel, Rediker, "Courts of Appeal and Colonialism in the British Caribbean: A Case for the Caribbean Court of Justice," *Michigan Journal of International Law*, Fall 2013, Vol. 35 Issue 1, p213-251.

<sup>17</sup> Cayman Islands Government, "Location and Geography," last updated August 4, 2011, <http://www.gov.ky/portal/page/portal/cighome/cayman/islands/locationgeography>  
Central Intelligence Agency, "Central America and Caribbean: Jamaica," *The World Fact Book*, <https://www.cia.gov/library/publications/the-world-factbook/geos/jm.html>

while the Cayman Islands are much more racially, ethnically, and linguistically diverse due to the large number of immigrants and foreign workers present.<sup>18</sup>

The economic situation of both countries and the scale of their respective economies is another notable difference when comparing them. While the Cayman Islands has a relatively robust and vibrant economy based on tourism and finances, Jamaica's economy is relatively weak and many of its people live in poverty. However, due to Jamaica's large size in comparison to the Cayman Islands, it still maintains a larger economy.

The Gross Domestic Product of the Cayman Islands was CI\$2,553,060,000 in 2014. That is the equivalent of US\$3,191,325,000. In 2015, Jamaica's Gross Domestic Product was US\$14,262,000,000, only four and a half times the size of the Cayman Islands' GDP, even though the population of Jamaica is fifty-five times the size of the Cayman Islands. The Cayman Islands' per capita GDP was \$43,800 in 2014, while Jamaica's was only \$9,000 in 2016. The Cayman Islands' unemployment rate was 4.7 percent in 2014, while Jamaica suffers with a 13.6 percent unemployment rate.<sup>19</sup>

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<sup>18</sup> CARICOM, "National Census Report 2001, Jamaica," *Caricom Capacity Development Programme: 2000 Round of Population and Housing Census Data Analysis Sub-Project*, <https://www.caricomstats.org/Files/Publications/NCR%20Reports/Jamaica.pdf>

Central Intelligence Agency, "Central America and Caribbean: Jamaica," *The World Fact Book*, <https://www.cia.gov/library/publications/the-world-factbook/geos/jm.html>

<sup>19</sup> CARICOM, "National Census Report 2001, Jamaica," *Caricom Capacity Development Programme: 2000 Round of Population and Housing Census Data Analysis Sub-Project*, <https://www.caricomstats.org/Files/Publications/NCR%20Reports/Jamaica.pdf>

Central Intelligence Agency, "Central America and Caribbean: Jamaica," *The World Fact Book*, <https://www.cia.gov/library/publications/the-world-factbook/geos/jm.html>

Central Intelligence Agency, "Central America and Caribbean: Cayman Islands," *The World Fact Book*, <https://www.cia.gov/library/publications/the-world-factbook/geos/cj.html>

The World Bank, "Data: Jamaica," [data.worldbank.org/country/jamaica](http://data.worldbank.org/country/jamaica)

Cayman Islands Government, "Database," Economics and Statistics Office, [http://www.eso.ky/database\\_search.html#4](http://www.eso.ky/database_search.html#4)

While the Cayman Islands have become prosperous over the past decades, Jamaica's economy is weak and heavily reliant on Jamaican expatriates living outside the island and sending home remittances from their jobs overseas, many in the United States. High illiteracy plagues Jamaica, along with crime and other factors related to lack of economic development. The government has become reliant on lending from the IMF, totaling \$1.27 billion over three years and \$1.1 billion from other banks. Rather than expanding, hurricanes, debt, and lack of jobs, have led the economy to shrink or increase only moderately in recent years. In 2016, government debt was 128 percent of Gross Domestic Product. Jamaica also has a weaker currency. While the Cayman Islands dollar is worth more than the United States dollar, the Jamaican dollar is much weaker and the equivalent to 127.58 United States dollars.<sup>20</sup> While these two nations are very comparable, their differences should be noted in this examination of their treatment of LGBT persons.

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<sup>20</sup> Tom Lasford, ed., *Political Handbook of the World, 2016-2017* (Sage Publishing: Thousand Oaks, CA, 2017), 759.

## CHAPTER III- LITERATURE REVIEW

### Organization

The layout of this examination of the Cayman Islands' and Jamaica's LGBT rights record will be arranged within six chapters. The first three chapters contain an introduction to the topic at hand, a review of the relevant literature, and a methodology. The fourth chapter contains an examination of the historical and political situation in Jamaica regarding LGBT rights. The fifth chapter contains an examination of the historical and political situation in the Cayman Islands for LGBT persons. Finally, the conclusion shall provide analysis on the comparison between the two nations and their LGBT rights records' connections to British law and influence.

Chapter 1 forms the background and methodological basis for the comparative case study between the two nations. In this chapter, the pertinent literature on LGBT rights and its connection to colonialism, and specifically British colonialism is examined. Previous research is examined that can put the situation in the Cayman Islands and Jamaica in a global and historical context. The methodological sections provides a foundation on which to evaluate the two nations based upon their similarities and connections, providing reasoning for their comparison.

Chapter 2 examines the LGBT rights situation in Jamaica. This section traces Jamaica's history on LGBT rights back to the influence of British Law. It also examines the current political situation in Jamaica regarding LGBT persons. Hate crimes are an important and pertinent topic in the context of Jamaica currently. LGBT persons are at great risk of persecution and attacks. The criminalization of sodomy in Jamaica is also a

widely discussed political issue. While Jamaica's current Prime Minister has sought to decriminalize homosexuality, it has yet to be accomplished.

Chapter 3 examines the situation in the Cayman Islands. The current situation for LGBT persons is examined along with the impact of British rule and law upon the Cayman Islands' treatment of LGBT persons. The chapter reviews the Cayman Islands' historical and legal ties to the United Kingdom and its impact on the territory's treatment of LGBT persons. Topics addressed in relation to this impact include the decriminalization of sodomy and the social and political fallout of the European Court of Human Rights' ruling in *Oliari v. Italy*.

Finally, the conclusion of the examination will synthesize the two investigations. The impact of British colonialism is compared in the two nations in regards to its impact on LGBT rights. While British law had previously been a negative influence on LGBT rights in the colonies, this has been dampened and reversed with time. While Jamaica, now independent, retains its archaic colonial criminalization of homosexuality and persecution of LGBT persons, the Cayman Islands have experienced pressure in modern times from the British government that has protected LGBT persons. Thus, while former colonies of the United Kingdom are prone to persecution of LGBT persons and the criminalization of homosexuality as a result of past colonial influences, current British Overseas Territories have experienced the opposite effect.

#### The Development of British Law on LGBT Rights in Former Colonies

There is great variation in national laws concerning homosexuality across the globe. This broad array ranges from very progressive states that have civil protections for

LGBT persons enshrined in law to states that criminalize homosexuality, and many even punish homosexuals with execution.

In a research article published in the Cambridge Review of International Affairs by Enze Han and Joseph O'Mahoney entitled "British Colonialism and the Criminalization of Homosexuality," the authors delve into the issue of whether or not British colonial domination has an impact on LGBT rights in countries today. This article demonstrates how former British colonies have a significantly higher chance of having laws criminalizing homosexuality.

Han and O'Mahoney used current information on the laws in 185 countries concerning the criminalization of homosexuality. Their study sought to understand this wide variation in laws regarding homosexuality through the prism of colonialism. Han and O'Mahoney specifically examined British colonial imperialism and its effects on the criminalization of homosexual acts.

Beginning in 1860 and continuing on for nearly a century, the British Empire imposed upon its colonies legal codes that often included criminalization of homosexual acts, referred to as 'unnatural offences.' Section 377 of the Indian Penal Code became a model that was imposed upon many other British colonies. This Penal Code was then copied by other colonies throughout the empire, with it being modified each time. The Queensland Penal Code of 1901, based on the Indian Penal Code, became a model for many colonies in Africa. This version also criminalized 'attempt,' making any sexual act, even non-penetrative, between males a crime. The Queensland Penal Code also explicitly punished both actors, regardless of consent.

Gupta found that three themes occurred in British imperial jurisprudence in relation to the interpretation of this section of the Penal Code. First, judges utilized the vague language of the law, referring to ‘unnatural offences,’ to punish a wide array of sexual offences. Also, consent and age were almost never factors in the rulings. Third and finally, Section 377’s provisions on ‘gross indecency’ were used to give police considerable power to arrest individuals on even the suspicion of homosexuality.<sup>21</sup>

These laws were part of the United Kingdom and other imperial powers’ ‘civilizing mission’ in the colonies. These penal codes imposed harsh penalties on many crimes, including vagrancy. The imperial authorities often viewed the natives they ruled over as lazy, uncivilized, and sexually promiscuous. The British-style penal codes were an effort to control and ‘civilize’ these native people, who were often seen as racially inferior. Indian law even criminalized entire tribes, labeling them as ‘dacoits,’ undesirable thieves. Hijras, persons of the third gender in India, were also criminalized and denied of their personhood.<sup>22</sup>

While sodomy laws were repealed in England and Wales in 1967, Scotland in 1980, and Northern Ireland in 1982, these laws continued in many of the United Kingdom’s current and former colonies.<sup>23</sup> While many of the United Kingdom’s former colonies have laws prohibiting same-sex sexual acts, not all of them are British in origin, some may have been established internally or influenced by Sharia law. Of the United

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<sup>21</sup> Alok Gupta, “This Alien Legacy: The Origins of “Sodomy” Laws in British Colonialism,” *Human Rights Watch*, December 17, 2008.

<sup>22</sup> Alok Gupta, “This Alien Legacy: The Origins of “Sodomy” Laws in British Colonialism,” *Human Rights Watch*, December 17, 2008.

<sup>23</sup> Enze Han and Joseph O’Mahoney, “British colonialism and the criminalization of homosexuality.” *Cambridge Review Of International Affairs* 27, no. 2 (2014): 268-288.



Kingdom's former colonies and protectorates, Australia, Bangladesh, Bhutan, Botswana, Brunei, Fiji, Gambia, Ghana, Hong Kong, India, Kenya, Kiribati, Lesotho, Malawi, Malaysia, Maldives, Marshall Islands, Mauritius, Myanmar, Nauru, New Zealand, Nigeria, Pakistan, Papua New Guinea, Seychelles, Sierra Leone, Singapore, Solomon Islands, Somalia, Sri Lanka, Sudan, Swaziland, Tanzania, Tonga, Tuvalu, Uganda, Western Samoa, Zambia, and Zimbabwe all inherited their laws punishing sodomy from the British. Of these, only Australia, New Zealand, Hong Kong, and Fiji have done away with their British inherited anti-sodomy laws.<sup>24</sup>

In the West Indies many of the United Kingdom's former possessions have also retained these harsh punishments for sodomy, known as 'buggery.' 11 of the 12 Commonwealth in the Caribbean have laws criminalizing same-sex intimacy. Guyana has the harshest laws on buggery, with a punishment of life in prison, while Trinidad and Tobago is second with a punishment of 25 years in prison. The Caribbean, especially Commonwealth nations in the region, has gained a reputation in popular media as a bastion of homophobia and intolerance toward the LGBT community. Antigua and Barbuda, Dominica, Grenada, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago all have laws penalizing same-sex sexual activity.<sup>25</sup> In 2012, two men were arrested for having sex on a cruise ship while

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<sup>24</sup> Alok Gupta, "This Alien Legacy: The Origins of "Sodomy" Laws in British Colonialism," *Human Rights Watch*, December 17, 2008.

<sup>25</sup> Joseph Gaskins Jr., 'Buggery' and the Commonwealth Caribbean: a comparative examination of the Bahamas, Jamaica, and Trinidad and Tobago." *Human Rights, Sexual Orientation and Gender Identity in The Commonwealth: Struggles for Decriminalisation and Change*. Institute of Commonwealth Studies, School of Advanced Study, University of London, pp. 429-430.; Aengus Carrol, The International Lesbian, Gay, Bisexual, Trans and Intersex Association. *State-Sponsored Homophobia; A World Survey of Sexual Orientation Laws: Criminalization, Protection and Recognition 11th Edition*. Updated October 2016, 122- 132.

docked in Dominica. After being spotted having sex on the cruise ship from the dock, the police boarded the vessel and arrested the two men. The charge of buggery was later dropped and the men plead guilty to indecent exposure and fined \$890 US.<sup>26</sup>

Although these laws are nearly universally used throughout the Commonwealth Caribbean, public opinion is divided. In Jamaica, a survey found that 20% of people believed that being LGBT should be a crime, while 47% disagreed. Results in Trinidad and Tobago were similar, with 20% agreeing that being LGBT should be a crime, while 52% disagreed. 76% of respondents in Trinidad and Tobago said that they would have no concerns if their neighbor was lesbian or gay, while 70% of Jamaican respondents felt the same.<sup>27</sup>

Former British colonies are not the only states that criminalize homosexual acts. 72 independent states have laws making same-sex sexual acts illegal, composing 37% of UN member states in 2016. Of these 72 states, 56 are located in Africa and Asia, many of them former colonies. Africa had the highest number at 33, Asia was second highest at 23, with the Americas and Ocean trailing behind at 11 and 6 states respectively. Many of the Asian and African nations have sodomy laws based on Sharia law, while other states may have inherited these laws from former colonial masters, or they may have developed internally.<sup>28</sup>

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<sup>26</sup> International Business, Times, "Dominica: Gay Men Arrested for 'Buggery' On Caribbean Cruise Plead Guilty To Indecent Exposure," International Business Times, 3., Regional Business News, EBSCOhost (accessed March 2, 2017).

<sup>27</sup> Aengus Carrol, The International Lesbian, Gay, Bisexual, Trans and Intersex Association. *State-Sponsored Homophobia; A World Survey of Sexual Orientation Laws: Criminalization, Protection and Recognition 11th Edition*. Updated October 2016, 122- 132.

<sup>28</sup> Aengus Carrol, The International Lesbian, Gay, Bisexual, Trans and Intersex Association. *State-Sponsored Homophobia; A World Survey of Sexual Orientation Laws: Criminalization, Protection and Recognition 11th Edition*: 35-37.

## The Impact of British and European Law on LGBT Rights in Current British Overseas Territories

The United Kingdom currently has fourteen external territories under its jurisdiction. These territories have been referred to as British Overseas Territories since 2002 and were formerly referred to as Dependent Territories, and before that as Crown Colonies.<sup>29</sup> In 2000, the United Kingdom, through an order-in-council of the Queen's Privy Council, issued the Caribbean Territories (Criminal Law) Order, which decriminalized homosexual acts between consenting adults in the remaining British Dependent Territories. This order was made as an amendment to the Penal Codes of the British Dependent Territories.<sup>30</sup>

Not only are these Overseas Territories bound by British Orders in Council, but they are also bound to follow international law and rulings through their relationship with the United Kingdom. The governments of the Overseas Territories are bound to follow the European Convention on Human Rights and the rulings of the European Court of Human Rights. Section 2 of the European Convention on Human Rights states:

1. Any State may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary General of the Council of Europe that the present Convention shall, subject to paragraph 4 of this Article, extend to all or any of the territories for whose international relations it is responsible.

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<sup>29</sup> British Overseas Territories Act 2002, *Change of Names*, sec. 1.

<sup>30</sup> Caribbean Territories (Criminal Law) Order. December 13, 2000. [http://agc.gov.ms/wp-content/uploads/2010/02/penal\\_code.pdf](http://agc.gov.ms/wp-content/uploads/2010/02/penal_code.pdf) <http://www.gov.ky/portal/pls/portal/docs/1/11525775.PDF>

2. The Convention shall extend to the territory or territories named in the notification from the thirtieth day after the receipt of this notification by the Secretary General of the Council of Europe.
3. The provisions of this Convention shall be applied in such territories with due regard, however, to local requirements.
4. Any state which has made a declaration in accordance with paragraph 1 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, nongovernmental organisations or groups of individuals as provided by Article 34 of the Convention.<sup>31</sup>

During the drafting of the Convention, the United Kingdom decided to include most of the territories except Pitcairn, The British Antarctic Territory, and the British Indian Ocean Territory. This provision is located in Article 56 of the Convention.<sup>32</sup>

On October 21, 2015, the European Court of Human Rights declared its landmark decision in the case of *Oliari and Others v. Italy*. The case began in 2008 when an Italian gay couple decided to apply for a marriage license and were rejected. Italian law does not permit same-sex couples to wed. However, the European Court of Human Rights ruled in the favor of the couple, stating that Article 8 of the European Convention on Human Rights not only prohibited the government from arbitrarily interfering in family life, but the government also had positive obligations to ensure that these civil rights were respected. The court also referenced Article 14 of the ECHR, which states:

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<sup>31</sup> European Court of Human Rights, *European Convention on Human Rights*, Section 2, November 4, 1950, accessed September 12, 2015.

<sup>32</sup> I.D. Hendry and Susan Dickson, *British Overseas Territories Law* (Oxford: Hart, 2011), 173.

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”<sup>33</sup>

While not finding evidence for a right to marriage, the court ruled that Italy had an obligation to provide civil unions with the benefits of marriage to same-sex couples.<sup>34</sup>

Not only has the ruling by the European Court of Human Rights made waves across Europe, but in the British Overseas Territories as well. Same sex marriage has been a heated topic of debate in the British Overseas Territories for some time. Of the permanently inhabited, non-military British Overseas Territories remaining, only two fully allow for same-sex marriage, Pitcairn Islands and Gibraltar, while a third, Saint Helena, Ascension and Tristan da Cunha, recognizes same sex marriage on one island. Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, the Falkland Islands, Montserrat, and the Turks and Caicos do not recognize same sex marriage.<sup>35</sup> While the Virgin Islands does not recognize same sex marriage, it does prohibit discrimination based on sexual orientation.<sup>36</sup> Both the Turks and Caicos and Montserrat ban same-sex

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<sup>33</sup> European Court of Human Rights, *European Convention on Human Rights*, Article 14, November 4, 1950, accessed September 12, 2015.

<sup>34</sup> European Court of Human Rights, “Case of Oliari and Others v. Italy,” July 21, 2015, (accessed September 12, 2015). <http://hudoc.echr.coe.int/eng?i001-156265>

<sup>35</sup> The Royal Gazette. *Same Sex Rights in the Caribbean*. <http://www.royalgazette.com/assets/pdf/RG348440311.pdf>; “Election Results,” *Election Management Body of Bermuda*. <http://elections.gov.bm/election-results/?ReferendumId=1>; “Bermuda Same-Sex marriage Referendum Set for June 23,” *Jamaica Observer*, May 12, 2016. <http://www.jamaicaobserver.com/news/Bermuda-same-sex-marriage-referendum-set-for-June-23>

<sup>36</sup> The Virgin Islands Constitution Order 2007, Sections 9 and 26. June 15, 2007. <http://www.bvi.gov.vg/sites/default/files/constitution.pdf>

marriage in their constitutions.<sup>37</sup> The Cayman Islands constitution guarantees the right of marriage only to opposite sex couples, but does not specifically prohibit same sex marriage.<sup>38</sup> Via a court ruling in 2016, the Cayman Islands recognizes foreign same sex marriages for the purposes of immigration.<sup>39</sup> South Georgia and South Sandwich Islands is a primarily scientific outpost, while the British Indian Ocean Territory and the Akrotiri and Dhekelia Base Areas are primarily military outposts.

Gibraltar's Parliament passed a law providing for equal marriage rights for same-sex couples on October 26, 2016. The governing party and Chief Minister Fabian Picardo stressed that the issue at hand was one of civil marriage, not religious doctrine or holy matrimony. Both the government and opposition supported the bill, with a small minority voicing dissent. The small territory had already adopted civil unions for same-sex couples previously.<sup>40</sup>

On February 11, 2016, Trevor Moniz, Attorney General of Bermuda informed a group of Bermudians at a public meeting that his party, the One Bermuda Alliance, planned to introduce legislation to allow for same-sex civil unions. Mr. Moniz stated that the move would bring Bermuda into compliance with the European Court of Human Right's ruling in *Oliari v. Italy*, which stated that Italy must provide benefits to same-sex

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<sup>37</sup> The Montserrat Constitution Order 2010, Article 10, sec. 1, October 20, 2010, <http://www.constitution.ms/wp-content/uploads/2014/07/Montserrat-Constitution-Order-2010-SI-2010-No-24741.pdf>;

The Turks and Caicos Constitution Order 2011, Article 10, July 20, 2011, [http://www.legislation.gov.uk/uksi/2011/1681/pdfs/uksi\\_20111681\\_en.pdf](http://www.legislation.gov.uk/uksi/2011/1681/pdfs/uksi_20111681_en.pdf)

<sup>38</sup> The Cayman Islands Constitution Order 2009, Section 14, June 17, 2009.

<http://www.knowyourconstitution.ky/sites/default/files/downloads/CI-Constitution-Order-2009.pdf>

<sup>39</sup> Duncan, Charles. "Gay Couple Wins Work Permit Appeal." *Cayman Compass*. July 24, 2016.

<https://www.caymancompass.com/2016/07/24/gay-couple-wins-work-permit-appeal/>

<sup>40</sup> Cavilla, Cristina. "Parliament Passes Same-Sex Marriage Law," *Gibraltar Chronicle*, October 27, 2016.

<http://chronicle.gi/2016/10/parliament-passes-same-sex-marriage-law/>

couples. However, Mr. Moniz was clear in stating that the change would not bring about same-sex marriage.<sup>41</sup> The opposition, however, argued that the Court had not ruled that Bermuda was under an obligation to secure same-sex unions, but only under an obligation to gauge the interest of the people in such a change. The opposition statement claimed that the ruling in Oliari only demanded that nations weigh the public interest against the rights requested by same-sex couples.<sup>42</sup>

On June 23, 2016 the government of Bermuda held a referendum on the issue. The government asked two questions, one on the approval of same-sex marriage and one on the approval of same-sex civil unions. Both measures failed to pass by considerable margins, with the question of same-sex marriage defeated by a margin of 2 to 1.<sup>43</sup>

#### The Importance of LGBT Related Laws

It is logical to question what impact these British-imposed laws had on the colonial societies that were forced to live under them. This effect can be seen when there is a repeal of one of the anti-sodomy laws enforced through the penal codes of various former colonies. There is no more fitting a case to study the phenomenon than the judicial ruling against Section 377 of the Indian Penal Code in 2009, as this was the model penal code that was applied throughout the empire.

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<sup>41</sup> Jones, Simon. "Civil Union Legislation Plans Unveiled," *The Royal Gazette*, February 12, 2016. <http://www.royalgazette.com/article/20160212/NEWS01/160219914>

<sup>42</sup> Strangeways, Sam. "OBA Under Fire Over Same Sex Marriage," *The Royal Gazette*, February 19, 2016. <http://www.royalgazette.com/article/20160219/NEWS/160219645/360000>

<sup>43</sup> "Election Results," *Election Management Body of Bermuda*. <http://elections.gov.bm/election-results/?ReferendumId=1>; "Bermuda Same-Sex marriage Referendum Set for June 23," *Jamaica Observer*, May 12, 2016. <http://www.jamaicaobserver.com/news/Bermuda-same-sex-marriage-referendum-set-for-June-23>

In 2013, Dipika Jain published an article in *The Arkansas Journal of Social Change and Public Service*, examining the effects of the Delhi High Court's decision to strike down this section of the Indian Penal Code. In the historic judgement, the High Court ruled that the Indian Penal Code's prohibition of sodomy violated the right to privacy, dignity, equality, and the prohibition of discrimination based on sex. The case was then referred to the Indian Supreme Court.

Jain posits that this section of the Penal Code, along with other laws that target sodomy, affect the relationship between LGBT communities and the police and other authorities, resulting in differential treatment. Also, these anti-sodomy laws impact the self-esteem and self-worth of LGBT individuals living in these societies. Personal interviews with members of the LGBT community were used to answer two questions regarding the effect of the High Court's ruling. First, have LGBT persons felt that they are now treated differently by law enforcement since the High Court's ruling? Secondly, have LGBT persons feel that they are now afforded a higher level of respect and acceptance from the society at large and in specific their families?

The study found that the High Court's ruling had four main effects. First, there was an increase in the self-esteem and confidence of LGBT persons. Second, there was a reduction in harassment of these groups by authorities. Third, there was a perception of increased social acceptance of LGBT people. Finally, there was a perception that there was an increase in the acceptance of LGBT persons by their families.<sup>44</sup>

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<sup>44</sup> Jain, D. "Impact of the Decriminalization of Homosexuality in Delhi: an Empirical Study," *The Arkansas Journal of Social Change and Public Service*, (January 13, 2013).



In the Caribbean, laws criminalizing homosexuality force lesbians and gays into a criminal class that are subject to harassment by their communities, families, and the police, subjecting them to violent and degrading treatment. Very high levels of abuse and harassment are reported by NGOs in nations such as Jamaica.<sup>45</sup> Even when laws criminalizing homosexuality are not enforced, they can have a pervasive effect on society at large, painting LGBT persons as ‘criminals.’ These laws contribute to ‘discrimination, stigmatization, and violence’ against LGBT people. They increase social prejudice and have seriously detrimental effect on the lives of LGBT people.<sup>46</sup>

### Conclusion

While many factors may contribute to the imposition of harsh laws or conditions for LGBT people around the world, when it comes to current and former territories of the United Kingdom, British law, and by extension European law, has played a major role. From an examination of current literature and understanding, three overarching conclusions can be drawn regarding the imposition of British law on the colonies in relation to LGBT persons. First, the British Empire had a great effect upon the legal foundations of many nations, including LGBT related laws which have criminalized sodomy. Second, current British Territories are subject to British authority as well as the European Court of Human Rights, and thus have been forced to create a friendlier social

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<sup>45</sup> Joseph Gaskins Jr., ‘Buggery’ and the Commonwealth Caribbean: a comparative examination of the Bahamas, Jamaica, and Trinidad and Tobago.” *Human Rights, Sexual Orientation and Gender Identity in The Commonwealth: Struggles for Decriminalisation and Change*. Institute of Commonwealth Studies, School of Advanced Study, University of London, 430

<sup>46</sup> Inter-American Commission on Human Rights, *Violence Against Lesbian, Gay, Bisexual, Trans, and Intersex Persons in the Americas*, Organization of American States. 2015.

and legal environment for LGBT people. Finally, these LGBT related laws have a real and lasting impact on the lives of LGBT people.

## CHAPTER IV- JAMAICA

In the early morning hours of July 22, 2013, 16-year-old Dwayne Jones laid half-conscious in the street, bleeding from a vicious mob attack for two hours, before he was finally killed by another round of beatings from his assailants. Jones had attended a house party dressed as a woman in Jamaica's capital, Kingston. When Jones spotted a female friend from church at the party, he revealed his identity to her and that he was in drag. Immediately afterwards, several of the girl's male friends began to gather around Jones, asking if he was a man or woman. Jones insisted that he was a woman as the two transgender friends he arrived with tried to extract him from the situation and leave the party. Before he was able to leave, a mob formed. Jones was beaten to death over a two hour period and his transgender friend, Khloe, was raped, later running to nearby woods for safety. None of Jones' family claimed his body, as his father had disowned him at the age of 14 and helped neighbors force him from the neighborhood he grew up in. After his death, Jamaica's social media erupted with comments claiming that Jones had brought about his own death by dressing in drag in public.<sup>47</sup>

Jones' story is not unique in Jamaica. LGBT people often face discrimination, harassment, threats, violence, and lack of assistance from authorities including the police. In a 2011 case study describing the treatment of a 31 year old male-to-female transgender Jamaican, the plight of transgender and gender non-conforming individuals can be seen. The subject, referred to as 'Janet,' was forced to leave her home, with the help of the police, when her community discovered that she was transitioning. With no place to live,

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<sup>47</sup> McFadden, David, "In Jamaica, Transgender Teen Killed by Mob," *AP*, August 11, 2013, <https://web.archive.org/web/20140103213141/http://bigstory.ap.org/article/jamaica-transgender-teen-murdered-mob>

Janet was forced to live on the streets where she was abused and raped by men offering her shelter who had become enraged when they discovered she was transgender. Janet was eventually given shelter by JFLAG, the Jamaican Federation of Lesbians, All-sexuals, and Gays, and underwent psychological treatment at the Caribbean Sexuality Research Group.<sup>48</sup>

Although known to many outsiders for its beautiful mountains and idyllic beaches dotted with palm trees, Jamaica's reality is much more complex. Plagued by crime, corruption, and poverty, the Island nation has its share of troubles. Not only are there economic and criminal justice struggles, the human rights situation in Jamaica is also alarming, especially for LGBT persons. In recent times it has even been labeled "the most homophobic place on Earth."

Jamaica is not alone in the Caribbean. Many former British West Indian colonies have a marked history of homophobia and persecution of LGBT people. However, Jamaica is particularly plighted by violence toward LGBT persons. Attacks on LGBT persons include beatings, stabbings, stonings, and drownings. Often times the family of the victim or even police will egg on the mob violence. Prominent LGBT rights activists Brian Williamson and Steve Harvey along with countless other gay men in Jamaica have been murdered.

### Culture

Much of this violence has been attributed to Jamaica's conservative culture. Three main cultural instigators in this violent unacceptance of LGBT persons are Jamaica's

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<sup>48</sup> James Caryl and Winston De La Haye, "Challenges and Treatment of a Transsexual in Jamaica," *Social and Economic Studies*, 60, no. 1, March 2011, 137-149.

‘macho’ reggae music culture, the prevalence of ultraconservative Christian churches, and a vehemently anti-gay Rastafarian movement. These cultural phenomena are assisted by a general lack of interest in promoting LGBT rights by Jamaica’s government in recent years and the criminalization of homosexual activity by Jamaican law.<sup>49</sup>

The murder of Dwayne Jones is not an isolated incident, but part of a larger pattern of violence aimed at the LGBT community in Jamaica. Corrective rape, assaults, murder, healthcare discrimination, and mob attacks have occurred and been reported by NGOs observing the human rights situation in Jamaica.<sup>50</sup> J-FLAG, Jamaican Federation of Lesbians, All-sexuals, and Gays, the most prominent LGBT rights Non-governmental organization on the island, dropped a lawsuit concerning the repeal of the anti-buggery law, citing death threats and security concerns. HIV/AIDS stigma is also a growing issue.<sup>51</sup>

Jamaica’s historical context is quite relevant when examining its prevailing cultural and political attitudes toward LGBT persons. Much of Jamaica’s culture today is a legacy of British colonial authority and the mass use of slavery in Jamaica during the seventeenth, eighteenth, and early nineteenth centuries. British rule lasted from 1655 when England captured Jamaica from Spain to 1962 when the United Kingdom granted Jamaica independence as a commonwealth realm.

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<sup>49</sup> Padgett, Tim, “The Most Homophobic Place on Earth?” *Time*, April 12, 2006, <http://content.time.com/time/world/article/0,8599,1182991,00.html>

<sup>50</sup> Kaleidoscope Trust, *Speaking Out 2015: The Rights of LGBTI People Across the Commonwealth*, 36, November 20, 2015, [http://kaleidoscopetrust.com/usr/library/documents/main/2015\\_speakingout\\_241115\\_web.pdf](http://kaleidoscopetrust.com/usr/library/documents/main/2015_speakingout_241115_web.pdf)

<sup>51</sup> United States State Department, *Jamaica 2014 Human Rights Report*, 21-22, Updated July 2, 2015. <https://www.state.gov/documents/organization/236912.pdf>

The imposition of Christianity upon the enslaved population was a priority for the British authorities. The Consolidated Slave Act required plantation owners to construct chapels for slaves on their property for the inoculation of slaves into Christianity. Anti-buggery laws were first introduced in 1553 in England and was rapidly exported to the colonies during the nineteenth century. Anglican theology taught homosexuality was wicked and immoral.<sup>52</sup>

Dancehall and Reggae culture also promote homophobia with explicit and violent lyrics aimed at the gay community.<sup>53</sup> This so called ‘murder music’ is a staple of the Dancehall genre in Jamaica. Jamaican music stars like Buju Banton, Beenie Man, Capleton, and Sizzla Kalonji all utilize homophobic and violent lyrics. Banton’s “Boom Boom Bye,” originally recorded in 1988, has been viewed over twenty-two million times on youtube with over eighty-five thousand likes.<sup>54</sup> The Patwa (Jamaican dialect) chorus of “Boom Boom Bye” illustrates the graphic, homophobic, and violent nature of dancehall,

Boom bye bye (“Boom [the sound of a gunshot], bye bye)

inna batty bwoy head (in a faggot’s head)

Rude bwoy no promote no nasty man (the tough young guys don’t accept fags)

dem haffi dead. (they have to die.)

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<sup>52</sup> Christopher A.D. Charles, "Representations of Homosexuality in Jamaica," *Social and Economic Studies* 60, no. 1, 2011, 3-29. <http://www.jstor.org/stable/41635290>.

<sup>53</sup> Kaleidoscope Trust, *Speaking Out 2015: The Rights of LGBTI People Across the Commonwealth*, 36, November 20, 2015,

[http://kaleidoscopetrust.com/usr/library/documents/main/2015\\_speakingout\\_241115\\_web.pdf](http://kaleidoscopetrust.com/usr/library/documents/main/2015_speakingout_241115_web.pdf)

<sup>54</sup> Spyro Tek, “Buju Banton - Boom Bye Bye,” Youtube, September 19, 2007,

<https://www.youtube.com/watch?v=aIUZlzd37sl>

The “Stop Muder Music” campaign is an international movement to end Dancehall’s homophobic lyrics. Powerful anti-LGBT cultural biases are reinforced by these lyrics.

These lyrics are not a fringe societal element, but a part of popular Jamaican culture. They have even been used in political camapaigns. The Jamaican Labour Party, discussed below, used a popular Dancehall song in their 2001 campaign. The homophobic lyrics from TOK’s Chi Chi Man became Labour’s theme song for the campaign,

From dem a par inna chi chi man car (Those who gather in a fag’s car)

Blaze di fire mek we bun dem! From dem a drink inna chi chi man bar (Light the fire, let’s burn them! Those who drink in a fag bar)

Blaze di fire mek we dun dem! (Light the fire, let’s kill them!)<sup>55</sup>

“Chi Chi” is a Patwa term for a termite or other pest or insect, thus a “Chi Chi Man” is a term for a homosexual, i.e. someone as low or unwanted as a termite. Amnesty International labeled these songs ‘murder music.’ Record deals have been threatened and many artists have been forced to forego these threatening and violent lyrics due to pressure from foreign markets where their concerts have been canceled.<sup>56</sup>

The religious intolerance showed toward LGBT persons by the early British, Anglican planter class did not cease once Jamaica became independent. Religion has

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<sup>55</sup> Nelson, Leah, “Jamaica’s Anti-Gay ‘Murder Music’ Carries Violent Message,” SPLC, Intelligence Report, Winter 2010 Issue, <https://www.splcenter.org/fighting-hate/intelligence-report/2015/jamaicas-anti-gay-murder-music-carries-violent-message>

<sup>56</sup> Noell M. Cowell, “Public Discourse, Popular Culture and Attitudes Towards Homosexuals in Jamaica,” *Social and Economic Studies* 60, no. 1, 2011: 31-60. <http://www.jstor.org/stable/41635291>.

been a major factor in Jamaican attitudes toward homosexuality. According to Charles, opposition to homosexuality is nearly ‘omnipresent’ in Jamaican Christian culture.<sup>57</sup>

Much of the discussion culturally and religiously in Jamaica centers around the ‘natural’ vs ‘unnatural’ concerning homosexuality. One Jamaican sociologist, Orville Taylor put it this way,

“It is not normal behavior. It is something people do by choice...you are socialized into it, and if you come with a ‘born’ argument you are basically saying, by dint of that, people are born criminals, that people are born bright; people are born suited for certain professions. That is a dangerous sort of argument.”<sup>58</sup>

Politics and law are considerably influenced by this strong Christian social element that is influential in the drafting of legislation. In 2006, the Christian Lawyers’ Fellowship of Jamaica lobbied Attorney General A.J. Nicholson for a reconsideration of the wording of amendments to the Charter of Fundamental Rights and Freedoms of the Constitution of Jamaica. The association was concerned that the wording may be used later to decriminalize homosexuality or lead to same-sex marriage. This was in reaction to J-FLAG’s advocacy for the inclusion of sexual orientation as a protected class in the reformed Charter. The pastors argued that if the law was amended it could put them at risk of liability for preaching the Gospel or the Gospel could be labeled as hate speech. The committee tasked with the review of the Charter and proposing amendments argued that J-FLAG’s proposal would be very difficult to fit within a ‘Christian Society’ like

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<sup>57</sup> Christopher A.D. Charles, "Representations of Homosexuality in Jamaica," *Social and Economic Studies* 60, no. 1, 2011, 3-29, <http://www.jstor.org/stable/41635290>.

<sup>58</sup> Noell M. Cowell, "Public Discourse, Popular Culture and Attitudes Towards Homosexuals in Jamaica," *Social and Economic Studies* 60, no. 1, 2011: 31-60. <http://www.jstor.org/stable/41635291>.



Jamaica. Many Christian groups, churches, and prominent ministers have all been involved in advocating for the continued existence of the Buggery Act. Although Jamaica has no established or official church and maintains a separation of church and state, religion wields a considerable influence over the political arena. Nationalism, racial identity, i.e. 'sense of blackness,' and religiosity all play a part in the cultural discussion regarding homosexuality in Jamaica.<sup>59</sup>

While homosexuality remains a contentious issue in Jamaica, attitudes among Jamaicans have been evolving. For example, 89% of those questioned in a survey conducted by a research team from the University of the West Indies at Mona stated that they believe homosexuality is prevalent in Jamaica. Some 66.8% felt that it was more prevalent based on social class, with 57.7% identifying upper class Jamaicans as being more likely to be gay. Only 10% felt that homosexuals are born that way, while 28.6% felt that it is a result of environment rather than birth. The majority, however, agreed that it was due to a combination of the two. Over half of Jamaicans surveyed believed that one cannot be religious and a homosexuality at the same time. A collective 85% of those surveyed opposed the decriminalization of homosexuality while 82% of respondents identified homosexuality as wrong or immoral.<sup>60</sup>

In 2015, Keon West of the University of London and Noel M. Cowell of the University of the West Indies published the results of a two-year survey of over 900

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<sup>59</sup> Latoya Lazarus, "This Is a Christian Nation: Gender and Sexuality in Processes of Constitutional and Legal Reform in Jamaica," *Social and Economic Studies* 61, no. 3, 2012, 128. <http://www.jstor.org/stable/41803770>.

<sup>60</sup> Ian Boxill, Joulene Martin, Roy Russell, Lloyd Waller, Tracian Meikle, and Rashalee Mitchell, *National Survey of Attitudes and Perceptions of Jamaicans Towards Same Sex Relationships*, University of the West Indies-Mona, January 2011.

Jamaicans. This study examined the influences of certain factors on opposition to gay rights and negative feelings toward gay people. Gender, education, income, dancehall music, and religiosity were all correlated with opposition to gay rights and negative feelings toward gay people. Those who were female were less likely to have anti-gay bias, as did those with higher incomes and more education. Higher religiosity was correlated with an increased likelihood of anti-gay feelings and opposition to gay rights. An affinity for Dancehall music produced similar results. Gender showed the strongest correlation, with opposition toward homosexuality much stronger in men than women. Also, there was a disparity in feelings toward gays and lesbians, with men more likely to feel opposition toward male homosexuality than lesbianism.<sup>61</sup>

In 2012, the Inter-American Commission on Human Rights, a component of the Organization of American States, issued a report detailing the human rights situation in Jamaica. Chapter VII details a scathing condemnation of human rights abuses, including a lack of action against discrimination and violence committed against LGBT people. The report found that discrimination was widespread and entrenched within Jamaican society and had become institutionalized at all levels.

Over the course of approximately 18 months, the Commission received information pertaining to four murders committed against gay men under circumstances that alluded to homophobia as a motivating factor. One man thought to be a homosexual was hacked to death by machete, while another died when his home was fire-bombed.<sup>62</sup>

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<sup>61</sup> Keon West and Noel M. Cowell, "Predictors of Prejudice Against Lesbians and Gay Men in Jamaica," *Journal Of Sex Research* 52, no. 3, 2015, 296-305, Academic Search Premier, EBSCOhost (accessed February 7, 2017).

<sup>62</sup> José de Jesús Orozco Henríquez, Tracy Robinson, Felipe González, Dinah Shelton, Rodrigo Escobar Gil, Rosa María Ortiz, and Rose-Marie Belle Antoine, "Report on the Situation of Human Rights in Jamaica,"

The report condemned both the Jamaican government as a whole and both of the major political parties for failure to address the abuse of civil rights committed against LGBT people. While evidence is available to the contrary, the Jamaican government contends that no mob violence has been committed against LGBT people, no arbitrary detention of LGBT people occurs, and that discrimination against LGBT people is not permitted.<sup>63</sup>

Although there is a considerable local cultural and political influence over bias toward and persecution of LGBT persons, there is also an element of colonial influence as well. This colonial history is rooted in Victorian era English notions of sexuality. In the late seventeenth century Francis Dilly was executed on order of the Governor of Jamaica for sodomy. The Buggery Law of 1861 was applied to the colony by its British overlords, imposing strict penalties for sodomy. This act was not repealed in the United Kingdom until 1967, five years after Jamaica's independence. Since all laws passed during the colonial era continued to be in force after independence, buggery remained a crime in Jamaica upon independence.<sup>64</sup>

No other crime in the Offences Against the Person Act is labelled as being 'unnatural.' Not only does the law criminalize sodomy, but even attempted sodomy. The law states:

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Inter-American Commission on Human Rights, Organization of American States, August 10, 2012, 95. [www.cidh.org](http://www.cidh.org)

<sup>63</sup> José de Jesús Orozco Henríquez, Tracy Robinson, Felipe González, Dinah Shelton, Rodrigo Escobar Gil, Rosa María Ortiz, and Rose-Marie Belle Antoine, "Report on the Situation of Human Rights in Jamaica," Inter-American Commission on Human Rights, Organization of American States, August 10, 2012, 96. [www.cidh.org](http://www.cidh.org)

<sup>64</sup> Joseph, Gaskins Jr., 'Buggery' and the Commonwealth Caribbean: a comparative examination of the Bahamas, Jamaica, and Trinidad and Tobago," *Human Rights, Sexual Orientation and Gender Identity in The Commonwealth: Struggles for Decriminalisation and Change*, Institute of Commonwealth Studies, School of Advanced Study, University of London, pp. 429-454. ISBN 978-0-9573548-8-3

Article 76. Unnatural Crime [BUGGERY] “Whosoever shall be convicted of the abominable crime of buggery [anal intercourse] committed either with mankind or with any animal, shall be liable to be imprisoned and kept to hard labour for a term not exceeding ten years.”

Article 77. Attempt [ATTEMPTED BUGGERY] “Whosoever shall attempt to commit the said abominable crime, or shall be guilty of any assault with intent to commit the same, or of any indecent assault upon any male person, shall be guilty of a misdemeanour, and being convicted thereof shall be liable to be imprisoned for a term not exceeding seven years, with or without hard labour.”

Article 78. Proof of Carnal Knowledge “Whenever upon the trial of any offence punishable under this Act, it may be necessary to prove carnal knowledge, it shall not be necessary to prove the actual emission of seed in order to constitute a carnal knowledge, but the carnal knowledge shall be deemed complete upon proof of penetration only.”

Article 79. Outrages on Decency [GROSS INDECENCY] “Any male person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for a term not exceeding 2 years, with or without hard labour.”<sup>65</sup>

The Offences Against the Person Act also gives police wide latitudes to detain and interrogate suspects. Any person found loitering from 7 p.m. to 6 a.m. may be

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<sup>65</sup> Offences Against the Person Act 2009, Jamaica, 40,  
[http://www.vertic.org/media/National%20Legislation/Jamaica/JM\\_Offences\\_against\\_the\\_Person\\_Act.pdf](http://www.vertic.org/media/National%20Legislation/Jamaica/JM_Offences_against_the_Person_Act.pdf)

arbitrarily arrested by police without warrant according to the act. This may be used against any person that an officer deems may have committed a crime or may be about to commit a crime, including buggery.

Harassment by hospital and prison staff, mob attacks, and shootings have all been reported by local gay rights organizations. Police not only fail to act on reports of violence against LGBT people, but are at times perpetrators of such violence. There are instances of police harassing and attacking men suspected of being gay and inciting mob attacks. This abuse and encouragement of violence toward LGBT people creates a situation in which LGBT people have no recourse for legal action.<sup>66</sup>

In June of 2014, a mob formed on the streets of Young's Plaza in the Jamaican city of May Pen when they heard that a gay man had been spotted in the shopping center putting on lipstick. Taking refuge in a clothing store, the man had to be protected by police to keep the mob at bay. The group watched, taking video on smartphones while hurling insults, as the man was taken away by police.<sup>67</sup>

In a period between February and July 2007, there were 43 separate mob attacks against LGBT people in Jamaica. Mob violence against LGBT people has not been taken seriously by police, or even worse, encouraged. On April 8, 2007, a mob attacked a church housing some 150 individuals during the funeral of a gay man. When police were called to the scene they were reported to have socialized with members of the mob and

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<sup>66</sup> José de Jesús Orozco Henríquez, Tracy Robinson, Felipe González, Dinah Shelton, Rodrigo Escobar Gil, Rosa María Ortiz, and Rose-Marie Belle Antoine, "Report on the Situation of Human Rights in Jamaica," Inter-American Commission on Human Rights, Organization of American States, August 10, 2012, 95-98. [www.cidh.org](http://www.cidh.org)

<sup>67</sup> Adri Murguía, Dir., *Young and Gay: Jamaica's Gully Queens*, Vice News, 2014. <https://www.youtube.com/watch?v=ILXVpFQVEbw>

did not prevent them from carrying out attacks. The only actions taken by the police called to the scene was to search the vehicles of those who were there to attend the funeral of the gay man.<sup>68</sup>

Police provide the names of those arrested for the crime of buggery to local media, whom then publish them. This can endanger the lives and well-being of those arrested for being homosexuals, as it can make them a target for violent attacks. Those who publicly defend the rights of LGBT people have been harassed and murdered as well. In 2004 and 2005, Brian Williamson and Steve Harvey were murdered. Both were prominent members of the LGBT rights movement in Jamaica. Members of LGBT rights groups such as J-FLAG, the Jamaican Federation of Lesbians, All-Sexuals, and Gays, have reported harassment and death threats. Violence against LGBT people is often seen as socially permissible or even beneficial. Attacks have been described as a “moral cleansing.” Witnesses to violent attacks have stated that many see the act as a “service to society.”<sup>69</sup>

The homophobic nature of Jamaican society and the lack of ability for LGBT persons to seek legal recourse against acts of violence and discrimination causes considerable harm to LGBT people both directly and indirectly. Not only are LGBT people subject to these actions, but it also causes an unwillingness to seek medical treatment or preventative measures related to HIV and AIDS. HIV positive men in Jamaica are often singled out for abuse and harassment. Those who contract HIV are

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<sup>68</sup> José de Jesús Orozco Henríquez, Tracy Robinson, Felipe González, Dinah Shelton, Rodrigo Escobar Gil, Rosa María Ortiz, and Rose-Marie Belle Antoine, “Report on the Situation of Human Rights in Jamaica,” Inter-American Commission on Human Rights, Organization of American States, August 10, 2012, 95-98. [www.cidh.org](http://www.cidh.org)

<sup>69</sup> *Ibid.*, 98-99.

afraid to seek medical treatment from doctors as some men who have been outed as HIV positive have had tires forced over them and set afire in a practice known as “necklacing.” As condoms have been associated with men who have sex with men as a preventative against HIV infection, many straight men have refused to carry them. While infection with HIV is estimated at 1.6% among the general population, it is estimated to be 31.1% among gay men in Jamaica.<sup>70</sup>

Social stigma is one of the leading issues facing HIV positive people in Jamaica. Stigma creates a barrier between the affected population and possible treatment. Failure to seek medical attention and a bias against the use of condoms have caused the HIV and AIDS epidemic to increase across Jamaican society. It is common for HIV positive men who have sex with men to also have sex with women, and the virus is now increasingly spreading among the female population. HIV and AIDS workers and activists also face ostracization and fear being accused of ‘promoting’ homosexuality. In a study conducted in 2005, one medical doctor stated he had ‘not come across any’ homosexuals and asked the researcher conducting the study if there were actually homosexuals in Jamaica.<sup>71</sup>

In a 2002 survey of students at the University of the West Indies in Jamaica, 67% of respondents said they were sympathetic to heterosexual men with HIV, while only 40% stated they were sympathetic to homosexual men. 81% stated that they were sympathetic to women who are not sex workers that have contracted the virus. These attitudes illustrate a cultural bias against LGBT persons with HIV as compared to their

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<sup>70</sup> Ibid., 103.

<sup>71</sup> Ruth C. White and Robert Carr, “Homosexuality and HIV/AIDS Stigma in Jamaica,” *Culture, Health, and Sexuality*, 7, no. 4, August 2005, 347-353, Jstor.

heterosexual counterparts. HIV status may compound existing social stigmas against LGBT people.<sup>72</sup>

Along with HIV, discrimination, and violent attacks, homelessness has become a major issue facing the LGBT community in Jamaica. In the capital of Kingston, LGBT youth that have been disowned by their family or ostracized by their communities take refuge in the storm drain system known as the ‘gully.’ These youth often describe themselves as ‘gully queens’ and are on the fringe of Jamaican society.

According to Christopher Murdoch, commanding officer of the New Kingston Police, the gully queens use their life in the gully and their sexual orientation and gender identity as a way to commit crimes. Murdoch, when interviewed by Vice News, described the gully queens as not living in the storm drains out of fear of being attacked, but by choice and stated that they chose their sexuality. According to the gully queens, they face harassment, violence, and discrimination. Living with few possessions and little real shelter from the elements, the gully queens make large storm drains and underpasses their homes.<sup>73</sup>

Upwards of 25 people can live within a single gully. Food is cooked collectively in pots and the inhabitants sleep on mattresses or makeshift beds of carpets and pillows in the gully, often with only sheets hanging to separate spaces, or nothing at all. The gully queens often will sell snacks or marijuana on the street for money, while others are employed as sex workers. All of the inhabitants of the gully are LGBT as homeless

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<sup>72</sup> Norman, Lisa R., Robert Carr, and Julio Jimenez, “Sexual Stigma and Sympathy: Attitudes Toward People Living With HIV in Jamaica,” *Culture, Health, and Sexuality*, 8, no. 5, Oct. 2006, 423-433, Jstor.

<sup>73</sup> Adri Murguia, Dir., *Young and Gay: Jamaica’s Gully Queens*, Vice News, 2014.  
<https://www.youtube.com/watch?v=ILXVpFQVEbw>



heterosexuals will not live in the gully with its LGBT residents. Broken and leaking water pipes are used for washing. The gully queens have even created family units to replace the ones that have disowned them, often referring to their fellow residents as ‘mothers,’ ‘brothers,’ ‘sisters,’ and ‘daughters.’ Violence is common, with the residents often having to carry knives or machetes for protection.

Abuse against Bisexual and Lesbian women is also common. ‘Corrective rape’ is often perpetrated against Lesbians when they are outed. According to Angeline Jackson, founder of Quality of Citizenship Jamaica, police often do not take reports of sexual violence and rape committed against Bisexual and Lesbian women seriously.<sup>74</sup>

Under the direction of the United Nations High Commissioner on Human Rights and under the auspices of the United Nations Human Rights Council, a working group is established to review the human rights records of member nations. This group publishes a Universal Periodic Review (UPR) in cycles. In the first cycle conducted, the states participating made twelve recommendations for Jamaica, of which only one was accepted. The accepted recommendation dealt with the training of police officers in LGBT issues. Calls for legalization of homosexuality, protections for LGBT rights advocates and protection from discrimination were rejected. In the second cycle in which a review was conducted of Jamaica, the states participating in the review of Jamaica’s human rights record made eighteen recommendations. Jamaica rejected all but three, including recommendations on the legalization of homosexuality and codification of non-discrimination legislation. In the words of the working group’s report, Jamaica has

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<sup>74</sup> Adri Murguia, Dir., *Young and Gay: Jamaica’s Gully Queens*, Vice News, 2014. <https://www.youtube.com/watch?v=ILXVpFQVEbw>

responded to these calls for increased human rights protections for LGBT persons by stating, “...the issue of male homosexuality was one of great sensitivity in Jamaican society, in which cultural norms, values, religious and moral standards underlay a rejection of male homosexual behaviour by a large majority of Jamaicans; and that the Government was committed to ensuring that all citizens were protected from violence.”<sup>75</sup>

### Politics

LGBT rights have been a contentious issue in the past decade in Jamaica. Both major political parties have had to address the issue. While neither party has fully endorsed LGBT rights, there are differences in the approach of the two parties. The Jamaican Labour Party, the more conservative of the two, has featured some strong opposition to the expansion of LGBT rights and legalization of homosexuality. However, the People’s National Party’s leader has been more open to the idea of LGBT rights.

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<sup>75</sup> Aengus, Carrol, *State-Sponsored Homophobia; A World Survey of Sexual Orientation Laws: Criminalization, Protection and Recognition 11th Edition*, The International Lesbian, Gay, Bisexual, Trans and Intersex Association, Updated October 2016.  
[http://ilga.org/downloads/02\\_ILGA\\_State\\_Sponsored\\_Homophobia\\_2016\\_ENG\\_WEB\\_150516.pdf](http://ilga.org/downloads/02_ILGA_State_Sponsored_Homophobia_2016_ENG_WEB_150516.pdf)  
Office of the High Commission for Human Rights, “Universal Periodic Review,” United Nations Human Rights, Carrol, Aengus. *State-Sponsored Homophobia; A World Survey of Sexual Orientation Laws: Criminalization, Protection and Recognition 11th Edition*. The International Lesbian, Gay, Bisexual, Trans and Intersex Association. Updated October 2016.  
[http://ilga.org/downloads/02\\_ILGA\\_State\\_Sponsored\\_Homophobia\\_2016\\_ENG\\_WEB\\_150516.pdf](http://ilga.org/downloads/02_ILGA_State_Sponsored_Homophobia_2016_ENG_WEB_150516.pdf)  
United Nations General Assembly, “Report of the Working Group on the Universal Periodic Review\* Jamaica,” Human Rights Council Sixteenth session, Universal Periodic Review, January 4, 2011, [https://www.upr-info.org/sites/default/files/document/jamaica/session\\_9\\_-\\_november\\_2010/ahrc1614jamaicae.pdf](https://www.upr-info.org/sites/default/files/document/jamaica/session_9_-_november_2010/ahrc1614jamaicae.pdf)  
United Nations General Assembly, “Report of the Working Group on the Universal Periodic Review\* Jamaica,” Human Rights Council Thirtieth session, Universal Periodic Review, July 20, 2015, [https://www.upr-info.org/sites/default/files/document/jamaica/session\\_22\\_-\\_may\\_2015/a\\_hrc\\_30\\_15\\_en.pdf](https://www.upr-info.org/sites/default/files/document/jamaica/session_22_-_may_2015/a_hrc_30_15_en.pdf)

In 2008, Prime Minister Bruce Golding of the Jamaican Labour Party (JLP) emphatically insisted the homosexuals would not be permitted in his cabinet.<sup>76</sup> He has also opposed the decriminalization of homosexuality.<sup>77</sup> In 2009, he stated, “I will not accept that homosexuality must be accepted as a legitimate form of behaviour or the equivalent of marriage.” He opposed any kind of recognition of same-sex unions during debates around the passage of a new Charter of Rights.<sup>78</sup>

On December 20, 2011, in the lead-up to the 2011 Jamaican legislative elections, Portia Simpson Miller of the People’s National Party (PNP) stated, “no one should be discriminated against because of their sexual orientation.” She also stated that government should provide protection for LGBT persons. At the debate against her counterpart, Andrew Holness, Simpson Miller said that there should be a review of the buggery law and members of Parliament should be allowed to vote their conscience on the issue, rather than being tied to a party position. In addition, she also noted that her stance on the cabinet differed from Golding, and that individuals should be appointed based on merit.<sup>79</sup> However, no such vote was held under Simpson Miller’s tenure as Prime Minister after winning the 2011 election.

In 2014, Alric Campbell, People’s National Party Youth Organization President, stated that the reason the buggery law had not been brought to a vote in Parliament was

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<sup>76</sup> Jamaica Observer, “Not in My Cabinet, Says Golding,” May 21, 2008, <http://www.jamaicalabourparty.com/articles/no-room-gays>

<sup>77</sup> Dunkley, Alicia, “PM Says Country Won’t be Forced to Decriminalise Buggery,” Jamaica Observer, March 4, 2009, <http://www.jamaicalabourparty.com/articles/ja-will-not-bow>

<sup>78</sup> Jamaica Information Service, “PM: No to Same-Sex Unions, October 16, 2009, <http://www.jamaicalabourparty.com/articles/pm-no-same-sex-unions>

<sup>79</sup> Jamaica Observer, “Prime Minister, Andrew Holness and Opposition Leader Portia Simpson Miller give their views on the buggery law,” December 20, 2011, <https://www.youtube.com/watch?v=cQIUfi9ksUI>

because if the Legislative body approved of the change without the support of the people, legislators would ‘pay the bitter price.’ The Jamaica Coalition for a Healthy Society has campaigned against the repeal of the buggery law, claiming that it will lead to a normalization of deviant sexual behavior and endanger young boys.<sup>80</sup>

Before the 2015 Jamaican legislative elections, the new leader of the Jamaican Labour Party, Andrew Holness, declared that his government, if elected, would put the issue to a referendum. Rather than taking a stance on the issue as the other two previous Prime Ministers, Golding and Simpson Miller, had, Holness proposed to give the decision to the people in a national referendum.<sup>81</sup> However, as of 2017, no such referendum has been held, although Prime Minister Holness has insisted that the issue is still on the table, along with marijuana legalization and the Caribbean Court of Justice as the court of final appeal.<sup>82</sup>

### Conclusion

While blame for the difficulties faced by LGBT people in Jamaica cannot be apportioned to British colonialism alone, it has indeed impacted the culture and politics of the nation. Through the absorption of British Victorian mores upon the island colony, along with Britain’s other colonies, protectorates, and dependencies, Jamaica inherited a history of official persecution of LGBT people through society and the legal system. It

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<sup>80</sup> Adri Murguía, Dir., *Young and Gay: Jamaica’s Gully Queens*, Vice News, 2014.

<https://www.youtube.com/watch?v=ILXVpFQVEbw>

<sup>81</sup> Hines, Horace, “Holness: JLP Gov’t Will Put Buggery Law to Referendum,” *Jamaica Observer*, October 26, 2015, [http://www.jamaicaobserver.com/news/Holness--JLP-Gov-t-will-put-buggery-law-to-referendum\\_19235602](http://www.jamaicaobserver.com/news/Holness--JLP-Gov-t-will-put-buggery-law-to-referendum_19235602)

<sup>82</sup> Hall, Arthur, “When The Time Is Right - Buggery Referendum And Fixed Election Date Still On The Cards Says PM,” *Jamaica Gleaner*, March 2, 2017, <http://jamaica-gleaner.com/article/lead-stories/20170302/when-time-right-buggery-referendum-and-fixed-election-date-still-cards>

also inherited a moral, religious, and social system that has ostracized and persecuted LGBT people.

In politics, the issue of homosexuality has been quite contentious in Jamaica. With inaction by both parties on the issue, both the People's National Party, led by Portia Simpson Miller, and the Jamaica Labour Party, led by Andrew Holness, have given indications that there may be movement on the issue, however as of yet no official actions have been taken to ameliorate the situation and legalize homosexuality. The Buggery Law still stands within the Jamaican system of jurisprudence as one of many remnants of British colonial authority. Jamaican authorities still refuse to acknowledge the extent of the issues faced by the community when confronted by international human rights organizations.

In a nation plagued by violent crime, Jamaica's LGBT community has not been spared the full brunt of the epidemic. Crimes against LGBT people have been brutal and widespread, even affecting the leaders of the LGBT rights movement. With often no legal recourse, fearing persecution under the Buggery Law, many of these crimes go unpunished. Often police are unwilling to help or prevent the violence, and in some cases have joined in.

Public perception also plays a major role in the situation for LGBT Jamaicans. While there has been some movement towards a discussion of LGBT rights within politics, public perception still regards LGBT people in a negative light. HIV positive persons are especially subject to negative public perceptions. These social attitudes have led to a perilous situation for many young LGBT Jamaicans, especially those from underprivileged backgrounds. Ostracization and abandonment by families and parents has

led to homelessness, drug use and violence among many young LGBT Jamaicans, including the so called “gully queens” of Kingston.

In summary, there are many factors that interconnect to explain the prejudice and dangers facing the LGBT community in Jamaica. Cultural, political, and historical influences interplay to create a situation in which LGBT persons have faced widespread hardships in Jamaica. Colonial influences have impacted culture and religion along with the legal and political situation facing LGBT people. Cultural traditions and considerations such as the music scene have impacted the discussion surrounding LGBT rights. Traditional religious ideas about sexuality have prevailed in Jamaican culture and endured with the assistance of centuries-old laws that are remnants of the British colonial-era. This colonial history and heritage has been a major factor in preventing social and political progress in Jamaica toward more LGBT rights and inclusion.

## CHAPTER V - CAYMAN ISLANDS

In contrast to Jamaica, much of the dialogue in the Cayman Islands surrounding LGBT rights has concerned the Cayman Islands' political relationship with the United Kingdom and by extension European Courts. The issue of the legalization of homosexuality was settled in 2001 by directive of the United Kingdom and against the wishes of the local government. With the issue of same sex marriage, it again appears that the United Kingdom's relationship to the Cayman Island will likely affect its development of LGBT rights.

### Background and History

The Cayman Islands were first sighted in May 1503 by the Italian explorer Christopher Columbus. No indigenous population existed and the small islands played little part in the early settlement and colonization of the Caribbean by the Spanish and later British. After the English Civil War, Oliver Cromwell took control of England and the nation went to war with Spain. As a result, England gained possession of Jamaica in 1670, and along with it the Cayman Islands. Although attached to Jamaica in an administrative sense for much of this time, the Cayman Islands were left to develop on their own. According to Bodden, the islands developed as a colonial frontier society. In the years after colonization the settlements on the North and West of the island of Grand Cayman were susceptible to raids from Spaniards in nearby Caribbean colonies. The islands were unsuitable to large scale agricultural production like Jamaica, since rich soil and indeed land itself was scarce.

In the early 1960s a split emerged between the Cayman Islands and Jamaica. The West Indies Federation, an attempt by the British to federate their Caribbean territories

and grant them independence together, failed. Then in 1962, Jamaica moved toward independence. Political agitation had begun in the Cayman Islands in 1956, with the drafting of the Jamaican Constitution. A movement for women's suffrage began in 1957 and on August 8, 1958 the first Cayman political party was formed, the Cayman Vanguard Progressive Party. The first ever Caymanian Constitution came into effect July 4, 1959. The Cayman Islands then agreed to form part of the West Indies Federation as a dependency of Jamaica, along with the Turks and Caicos. Failing in 1961, the West Indies Federation, had been an ill-conceived attempt by the British to united island territories that had diverging interests and no federation-wide identity.

The failure of the Federation is perhaps one of the most consequential events in Caymanian history. The Cayman Islands had two paths laid out before it: to become an autonomous dependency of Jamaica, or to become a dependency of the United Kingdom. Much debate ensued over the path the Cayman Islands would take. The British Administrator of the Island, Jack Rose, had declared on December 14, 1961 in a public speech that the only path for autonomy and self-government was via a continued link with Jamaica, and a move toward a direct connection to the United Kingdom would result in direct rule. However, the Governor of Jamaica later dissuaded this notion, allowing for the possibility of autonomy under British rule.<sup>83</sup>

Two encampments formed, those wishing for autonomy under Jamaica, and those wishing to retain links to the United Kingdom. Although Jamaica became the most popular option in both the Legislative Assembly and the public, Dr. Roy McTaggart led a

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<sup>83</sup> J.A. Roy Bodden, *The Cayman Islands in Transition* (Kingston, Jamaica: Ian Randle Publishers, 2007) 1-27.



campaign advocating to choose the path of autonomy under British rule which eventually was what the local government decided upon. This arrangement, described by Bodden as “voluntary colonialism” has affected Caymanian politics and national consciousness since.<sup>84</sup>

In the Cayman Islands and other inhabited British Overseas Territories, each territory retains its own constitution, negotiated between representatives of the locally elected government and the government of the United Kingdom. The United Kingdom via the person of the Monarch retains ultimate control over the Overseas Territories. All executive authority is in theory invested in the Monarch. According to the Cayman Islands’ Constitution of 2009, the Governor of the Territory, a British appointed official, may at any time dissolve the Legislative Assembly after consulting the locally elected Premier.<sup>85</sup>

The power of the Governor, while not absolute, is broad. The constitution states: “(3) In the exercise of his or her functions under subsection (2), the Governor shall endeavour to promote good governance and to act in the best interests of the Cayman Islands so far as such interests are consistent with the interests of the United Kingdom. (4) Notwithstanding the jurisdiction of the courts in respect of functions exercised by the Governor, the question of whether or not the Governor has in any matter complied with

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<sup>84</sup> J.A. Roy Bodden, *The Cayman Islands in Transition* (Kingston, Jamaica: Ian Randle Publishers, 2007) 1-27.

<sup>85</sup> *The Cayman Islands Constitution Order 2009*, Part IV, Section 84, June 17, 2009. <http://www.knowyourconstitution.ky/sites/default/files/downloads/CI-Constitution-Order-2009.pdf>

any instructions addressed to him or her by or on behalf of Her Majesty shall not be inquired into in any court.”<sup>86</sup>

This provision, in effect, gives the United Kingdom the ability to govern the Island as it sees fit via the Governor to ensure that decisions made on the territorial level are not contrary to the interests of the Government of the United Kingdom. The Governor also retains immunity from prosecution and cannot be summoned by local courts to be made answerable for her decisions.<sup>87</sup>

The Turks and Caicos are the perfect illustration of the United Kingdom’s breadth of reserved powers of the Overseas Territories. On July 10<sup>th</sup>, 2008, a commission was assembled by Governor Richard Tauwhare in the Turks and Caicos to investigate corruption and conflicts of interest within the local government. On May 31<sup>st</sup>, 2009 the commission issued its report to Governor Wetherell of the Turks and Caicos. The report concluded that there was a high probability that there was systemic corruption within the local government of the Turks and Caicos. The report stated that there were extravagant uses of public expenditures, conflicts of interest, and bribery in exchange for Crown (publicly owned) land. The report even found the local leader of government, the Honourable Michael Misick to have likely been corrupt and committed misconduct and dishonesty in his role within government. The commissioner, Robin Auld, recommended a suspension of the local constitution and the temporary imposition of direct rule.<sup>88</sup>

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<sup>86</sup> *The Cayman Islands Constitution Order 2009*, Part II, Section 31, June 17, 2009.

<http://www.knowyourconstitution.ky/sites/default/files/downloads/CI-Constitution-Order-2009.pdf>

<sup>87</sup> *Ibid.*

<sup>88</sup> Robin Auld, *Turks and Caicos Commission of Inquiry 2008-2009 into possible corruption or other serious dishonesty in relation to past and present elected members of the Legislature in recent years*, 5, 14, 114-151, May 31, 2009.

In August of 2009, the United Kingdom ordered a suspension of the local government. The new Premier, Galmo Williams, condemned the maneuver as a coup d'état, but was unable to prevent it. Chris Bryant, minister of the Foreign Office of the United Kingdom issued the order to the Governor pursuant to the directive of an order in council issued by the Privy Council of the United Kingdom. Williams declared the move undemocratic and a step toward dictatorship and recolonization by the United Kingdom. The elected arms of the government, the Cabinet and Legislature were dismantled for a period of two years and their powers absorbed temporarily by the Governor while a new constitution was created.<sup>89</sup>

#### The Cayman Islands and British Authority

The British government, while never suspending the locally elected government of the Cayman Islands, has used its power over the territory and others in the Caribbean to impose its moral views. According to Richard Coles, former Attorney General for the Cayman Islands, orders-in-council are the mode by which the British government may impose its wishes upon these territories. As mentioned previously, the suspension of the elected government of the Turks and Caicos was accomplished by such an order-in-council. These orders are issued by the Privy Council in the United Kingdom, composed of present and past government ministers of the United Kingdom. The council brings into force acts of Parliament. This same council also contains the Judicial Committee of the Privy Council, which acts as the supreme judicial body for both the Cayman Islands and

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<http://webarchive.nationalarchives.gov.uk/20130225151514/http://turksandcaicosislands.fco.gov.uk/resources/en/pdf/2011/commission-of-inquiry/inquiry-report.pdf>

<sup>89</sup> Christina Fincher, "Britain Suspends Turks and Caicos Government," *Reuters*, August 14, 2009, <http://www.reuters.com/article/us-britain-turkscaicos/britain-suspends-turks-and-caicos-government-idUSTRE57D3TE20090814>

Jamaica. While Orders in Council are officially orders by the Monarch upon advice of the Privy Council, the decision-making authority for these orders largely rests with the Cabinet, government ministers chosen from Parliament. The current and previous versions of the Constitution of the Cayman Islands itself was issued via an Order in Council.<sup>90</sup>

The Cayman Islands' authority over moral or cultural issues has been curtailed recently by two orders-in-council. First, in 1991 the United Kingdom issued an Order in Council that abolished the death penalty in the Caribbean territories, including Anguilla, the British Virgin Islands, Montserrat, the Turks and Caicos, and the Cayman Islands. This was done against the expressed wishes of the local government in the Cayman Islands and the other territories. Just as the Judicial Committee of the Privy Council had curtailed the use of capital punishment in Jamaica, the United Kingdom used this authority to exercise its human rights agenda. Coming into force on May 10<sup>th</sup>, 1991, the Caribbean Territories (Abolition of Death Penalty for Murder) Order 1991 effectively annulled the law within the Cayman Islands providing for the death penalty for murder without the consent of the local government. Instead, the British government replaced the death penalty with a mandatory life sentence.<sup>91</sup>

The most recent occasion an order-in-council has been used to impose the British human rights agenda upon the Cayman Islands came in 2001. The Caribbean Territories (Criminal Law) Order abolished the punishment for homosexual acts committed in

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<sup>90</sup> Richard Coles, "Are Orders in Council the UK's Ultimate Weapon?" *Cayman News Service*, retrieved September 7, 2017. <http://cnslibrary.com/wp-content/uploads/Orders-in-Council-by-Richard-Coles.pdf>

<sup>91</sup> The Caribbean Territories (Abolition of Death Penalty for Murder) Order, UK Statutory Instrument 1991 No. 988 in force 10 May 1991. [http://agc.gov.ms/wp-content/uploads/2010/02/penal\\_code.pdf](http://agc.gov.ms/wp-content/uploads/2010/02/penal_code.pdf)

private by consenting adults. Notably, the order-in-council made a point to exclude any acts committed in a public restroom or in the company of more than two individuals. It also states that the responsibility to prove that a homosexual act has occurred and was not in private or between consenting adults will rest with the prosecution. The act also provides for retroactive use of the order on any person previously convicted of the crime.<sup>92</sup>

This was the first time the United Kingdom stepped in to protect the rights of LGBT people in the Overseas Territories. This created a watershed moment in the territories and perhaps set a precedent for future events. The United Kingdom stepped into the situation and imposed its own moral perspective as it relates to the human rights of LGBT people.

These acts were done in contravention to largescale disagreement by the local governments and populations of the territories. However, this change was not instituted without attempts to persuade the territories. The movement by the British government to institute this legal change in the territories had begun in 1999, after a reevaluation of the relationship with the territories. In the ‘Partnership for Progress and Prosperity’ issued in March of 1999 and mentioned later, the United Kingdom targeted three specific areas which it felt responsible for progressing within the legal framework of the territories. These were ending the use of corporal punishment, abolishing the death penalty, and decriminalizing private homosexual acts.<sup>93</sup>

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<sup>92</sup> Caribbean Territories (Criminal Law) Order, Order in Council made 13 December 2000, in force 1 January 2001, [http://agc.gov.ms/wp-content/uploads/2010/02/penal\\_code.pdf](http://agc.gov.ms/wp-content/uploads/2010/02/penal_code.pdf)  
<http://www.gov.ky/portal/pls/portal/docs/1/11525775.PDF>

<sup>93</sup>Peter Clegg, “The UK Caribbean Overseas Territories, New Labour, and the Strengthening of Metropolitan Control,” *Caribbean Studies*, 34, no. 1, Jan-June, 2006, 146-147.

At first the British had attempted to persuade the territories to change the laws on their own. While making progress on the issue of corporal punishment, the administering power faced considerable opposition to ending the death penalty and decriminalizing sex between men. Lengthy consultations with political, social, and religious leaders in the territories were conducted in an effort to convince them of the need for progress to no avail.

The relationship between the United Kingdom and the Overseas Territories has been complex and evolving. Shifting from being described as Colonies, to Dependent Territories, to Overseas Territories, there has been a move toward modernizing the relationship between the administering power, the United Kingdom, and these territories for which it is responsible. The links between these territories have often been shaped by their individual histories and relations to the administering power. As mentioned previously, the failure of the West Indies Federation was a watershed moment. With the larger British colonies in the Caribbean moving toward independence outside of the Federation, many of the smaller territories, including the Cayman Islands, were reluctant to follow suit. Having few of the natural resources, economic development, or infrastructure that the larger islands held, these small islands' governments feared a future without the British. The West Indies Act of 1962 became the cornerstone legislation which would govern the relationship between The British Virgin Islands, Montserrat, The Turks and Caicos Islands, and the Cayman Islands.<sup>94</sup>

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<sup>94</sup> Peter Clegg, "The UK Caribbean Overseas Territories, New Labour, and the Strengthening of Metropolitan Control," *Caribbean Studies*, 34, no. 1, Jan-June, 2006, 131-135

It was a natural disaster on one of these Islands that urged the United Kingdom to reevaluate the relationship with these territories. In July of 1995, Soufriere Hills on the island territory of Montserrat began erupting. Upwards of 90 percent of the local population had to be relocated. Nearly two thirds fled the island for safety, draining the tiny territory of much of its population. The natural disaster caused chaos and the role of the local and administering powers became confused and complicated. Between 1997 and 1999, the House of Commons issued several reports on the catastrophe. This opened up a debate within both the British and Overseas Territories political spheres about the nature of the relationship between them.

In March 1999, a government document entitled ‘Partnership for Progress and Prosperity’ was published which outlined the United Kingdom’s goals in modernizing the relationship with the territories. The paper stated that the status of the territories would remain unchanged and they should not be integrated into the home country, as France had done. However, the paper outlined a path of self-development and self-determination. Rather than integration, the paper endorsed continued growth in the power of the locally elected governments and British allowance of independence for the territories if they so wish. The paper noted however, that there was a clear wish from these territories to retain their constitutional status as dependencies of the United Kingdom and not move to independence. Also, the paper introduced an annual meeting of the locally elected heads of government, rather than using the appointed Governors as the sole method of coordination of between the territories. In 2002 the formal use of ‘Overseas Territories’

replaced ‘Dependent Territories’ at the behest of the territorial governments to reflect their new and evolving status as partners rather than dependents.<sup>95</sup>

Although resorting to the use of force regarding legalizing homosexuality, the British also began a campaign for human rights awareness in the Overseas Territories. The Foreign and Commonwealth Office along with the Department for International Development partnered to provide millions of pounds per year to fund human rights organizations and awareness campaigns in the territories. This money has contributed to pushes for the territories to become parties to international treaties recognizing human rights such as the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination Against Women.<sup>96</sup> A Human Rights Commission was also created as part of the Cayman Islands Constitution of 2009. This Commission oversees the human rights situation in the Cayman Islands and can make recommendations to government. The Commission can issue advice, guidance, and opinions and investigate violations of human rights, but does not have enforcement capabilities.<sup>97</sup>

Since the establishment of the ‘Partnership for Progress and Prosperity’ in 1999, all of the Overseas Territories in the Caribbean have either had new constitutions put into place or are in the drafting process. In 2007 the Virgin Islands were granted a new constitution, in which Chapter two instituted basic freedoms and fundamental rights

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<sup>95</sup> Peter Clegg, “The UK Caribbean Overseas Territories, New Labour, and the Strengthening of Metropolitan Control,” *Caribbean Studies*, 34, no. 1, Jan-June, 2006, 137-144

<sup>96</sup> Peter Clegg, “The UK Caribbean Overseas Territories, New Labour, and the Strengthening of Metropolitan Control,” *Caribbean Studies*, 34, no. 1, Jan-June, 2006, 147-148

<sup>97</sup> *The Cayman Islands Constitution Order 2009*, Caribbean and North Atlantic Territories, no. 1379, Part 1, June 17, 2009. <http://www.legislation.gov.uk/uksi/2009/1379/contents/made>



including equality before the law.<sup>98</sup> The Cayman Islands received a new constitution in 2009 that contained a section on fundamental human rights and freedoms. In 2010 Montserrat's Constitution came into effect, with the first part dedicated to protecting the fundamental rights and freedoms of Montserratians.<sup>99</sup> In 2011, the Turks and Caicos received a new modernized constitution in an attempt by the British authorities to stymie corruption. Part one of the constitution outlined the fundamental rights and freedoms of Turks and Caicos Islanders and is quite similar to that instituted within the Caymanian Constitution.<sup>100</sup> Anguilla is in the process of writing a new constitution and issued a new report and draft constitution on November 23, 2016. This Constitution, too, includes protections of human rights and equal treatment.<sup>101</sup>

As the Cayman Islands are a premier tourist destination for both travel by air and by cruise ship, local sensibilities can sometimes come into conflict with those of tourists, largely from the United States. In 1998 a Gay cruise line wished to dock in the Cayman Islands but was turned away by the government. In 2001, a Gay cruise ship wished to call port in the Cayman Islands but decided not to do so after the Leader of Government Business at the time, McKeeva Bush of the United Democratic Party, passed along the concerns of stakeholders and their wish to not have the cruise ship dock in the Cayman Islands. In 2003, the Cayman Islands Department of Tourism reevaluated its policy in

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<sup>98</sup> *The Virgin Islands Constitution Order 2007*, Caribbean and North Atlantic Territories, no. 1678, June 13, 2007, <http://www.legislation.gov.uk/uksi/2007/1678/contents/made>

<sup>99</sup> *The Montserrat Constitution Order 2010*, Caribbean and North Atlantic Territories, no. 2474, October 13, 2010, <http://www.legislation.gov.uk/uksi/2010/2474/contents/made>

<sup>100</sup> *The Turks and Caicos Constitution Order 2011*, Caribbean and North Atlantic Territories, no. 1681, July 13, 2011, <http://www.legislation.gov.uk/uksi/2011/1681/made>

<sup>101</sup> *Draft New Constitution for Anguilla: Explanatory Memorandum*, November 23, 2016, <http://www.gov.ai/documents/hoa/Draft%20New%20Constitution%20final.pdf>

relation to the situation and reversed course, establishing a policy of non-discrimination for all wishing to vacation in the Cayman Islands. In 2006 the first gay cruise docked in the Cayman Islands, bringing over 3,000 LGBT tourists. The Leader of Government Business, Kurt Tibbetts of the People's Progressive Movement, stated, "Unless their actions while they're here in the Cayman Islands go counter to our legislation, on what basis can we say no?" The event caused a minor stir, with Caymanian ministers and others on the religious right protesting.

Since then, several more gay cruises have come to the Cayman Islands without incident. Chairman of the Cayman Ministers Association, Reverend Bob Thompson, said that he would urge the local government to turn away any cruise ship wishing to dock in the islands if they advertise as being exclusively gay, stating, "We don't want to support that kind of image to our young people. We are not trying to make any personal attack on any person, but we do stand against this kind of thing being forced on to society. We don't think we need this kind of business."

In 2008 another incident occurred concerning gay tourists. In April of that year, a gay tourist, Aaron Chandler, was arrested by an off-duty Cayman Islands police officer for kissing his male partner in public at a popular beach bar on the island, the Royal Palms. The incident caused negative press coverage for the Cayman Islands, as the information was attained by bloggers and a boycott of the Cayman Islands by LGBT people was started.<sup>102</sup> Mr. Chandler did not have any charges filed against him by the

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<sup>102</sup> Cayman Compass, "Gay Cruise Decision Defended," *Cayman Compass*, January 30, 2006 (accessed September 7, 2017), <https://www.caymancompass.com/2006/01/30/gay-cruise-decision-defended/>; Cayman Compass, "Gay Cruisers Headed for Cayman," *Cayman Compass*, July 27, 2009 (accessed September 7, 2017), <https://www.caymancompass.com/2009/07/27/gay-cruisers-headed-for-cayman/>

government which stated his actions were legal. However, the officer in question was not disciplined and was determined to have acted properly since there was an imminent danger of a breach of the public peace since many individuals at the bar had made complaints. While the police stated that it was not illegal per se for two men to kiss in public, it could constitute a breach of the public peace if it caused complaints.<sup>103</sup>

The 2009 Cayman Islands Constitution was another contentious issue concerning LGBT rights in the Cayman Islands. Drafted by local politicians from the then ruling People's Progressive Movement in concert with British authorities, the new constitution sought to modernize Caymanian politics and bring it into the twenty first century. One of the People's Progressive Movements' stated goals within their campaign manifesto was to enshrine a Bill of Rights within the new constitution.

However, the Cayman Ministers' Association was opposed to this proposition and wrote an op-ed piece in the local paper, the *Cayman Compass*, in 2006 during the early drafting process. Concerned over the possibility that the new Bill of Rights would not be easily amended if incorporated into the new constitution, the CMA opined that the new Bill of Rights should be a separate piece of legislation. Much of the Ministers' Association's concerns surrounded the issue of same sex relationships. Fearing that a constitutionally enshrined right to equal treatment may be used in the future to provide for recognition of same sex couples by the government, the CMA opposed making the Bill of Rights an entrenched part of the Constitution of the Cayman Islands. With the

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<sup>103</sup> Cayman Compass, "Gay Kissing Not Illegal," *Cayman Compass*, June 24, 2008 (accessed September 7, 2017), <https://www.caymancompass.com/2008/06/24/gay-kissing-not-illegal/>

United Kingdom and the European Union courts and legislation moving toward more liberal treatment regarding same sex couples and their rights.

The new constitution had evolved and stalled over many years. An attempt in 1992 faced an impasse when the United Kingdom refused to approve of a charter of rights that did not include freedom of conscience, which the then ruling government in the Cayman Islands opposed. In 2003, the United Kingdom issued several changes to the draft constitution revolving around freedoms of the individual. Current Premier and then Government Minister Alden Mclaughlin stated, “ the UK is not going to settle for anything less [than a constitutionally enshrined Bill of Rights] and neither should we.”<sup>104</sup>

The eventual Constitution that was adopted in 2009, contained an enshrined Bill of Rights. The Bill of Rights contains a provision on the rights to marriage, which states: “Government shall respect the right of every unmarried man and woman of marriageable age (as determined by law) freely to marry a person of the opposite sex and found a family.” Therefore, the Constitution only explicitly allows for right of marriage between opposite sex couples. However, it is notable that there is no declarative statement prohibiting same sex marriage. The Constitution of the Cayman Islands does provide many other rights as well, such as freedom of thought, religion, and conscience which may provide benefit to same sex couples.<sup>105</sup> While the constitution does not specifically prohibit same sex unions, there is existing legislation that defines and

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<sup>104</sup> J.A. Roy Bodden, *The Cayman Islands in Transition* (Kingston, Jamaica: Ian Randle Publishers, 2007) 109-110.

<sup>105</sup> *The Cayman Islands Constitution Order 2009*, June 17, 2009, Part I, Section 14, <http://www.knowyourconstitution.ky/sites/default/files/downloads/CI-Constitution-Order-2009.pdf>

regulates marriage. The Marriage Law defines marriage in the Cayman Islands as only permissible between one man and one woman.<sup>106</sup>

### The Cayman Islands and European Institutions

Much of the LGBT rights situation in the Cayman Islands may be tied to its relationship with the United Kingdom. By extension, this creates a relationship between the Cayman Islands and the European Union and the Council of Europe. Both of these international organizations have developed a human rights agenda as of late that has expanded considerably. Beginning in 1950, these two organizations have both been molded by, and in turn molded the human rights agenda of Europe, including the United Kingdom.

According to Helfer and Voeten, the European Court of Human Rights' rulings not only have an impact on the country in question, but on other nations as well. Their findings show that the court's rulings increase the likelihood that neighboring European nations will adopt pro-LGBT rights after a ruling in favor of such rights by the European Court of Human Rights in neighboring nations. The study also found that increased salience around the issue following a ruling along with the ability of national courts to strike down laws in violation of the European Court of Human Rights' rulings both allow for the adoption of greater LGBT rights in countries where the populace is not necessarily supportive of such rights.<sup>107</sup>

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<sup>106</sup> *Marriage Law (2009 Revision)*, Section 2, July 20, 2009, <http://www.gov.ky/portal/pls/portal/docs/1/11526403.PDF>

<sup>107</sup> Laurence Helfer and Erik Voeten, "International Courts as Agents of Legal Change: Evidence from LGBT Rights in Europe," *International Organization* 68, no. 1 (January 2014): 77, *Political Science Complete*, EBSCOhost (accessed September 12, 2015).

The original European Convention on Human Rights was created by the member states of the Council of Europe and signed on November 4, 1950. It is composed of 59 articles divided into three sections along with additional protocols added at several later dates to update the document. Section 1 of the original document enumerated human rights to be protected, while section 2 established the European Court of Human Rights to ensure that signatory states adhered to the document.<sup>108</sup>

It is section 2 that not only allows for the creation of the European Court of Human Rights, but which also delineates the jurisdiction and scope of the court as well. Article 46 states that contracting parties are bound to abide by the ruling of the court. Article 56 of the Convention, which concerns the applicability of the court's rulings to overseas territories and nations, states:

1. Any State may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary General of the Council of Europe that the present Convention shall, subject to paragraph 4 of this Article, extend to all or any of the territories for whose international relations it is responsible.
2. The Convention shall extend to the territory or territories named in the notification as from the thirtieth day after the receipt of this notification by the Secretary General of the Council of Europe.
3. The provisions of this Convention shall be applied in such territories with due regard, however, to local requirements.

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<sup>108</sup> European Court of Human Rights, *European Convention on Human Rights*, November 4, 1950, accessed September 12, 2015, [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)

4. Any State which has made a declaration in accordance with paragraph 1 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, nongovernmental organisations or groups of individuals as provided by Article 34 of the Convention.

The European Convention on Human Rights applies to the inhabited British Overseas Territories. Under article 56 of the European Convention on Human Rights the United Kingdom has extended the convention to all of its territories except Pitcairn, The British Antarctic Territory, and the British Indian Ocean Territory. An example of the Convention being applied to the territories by the European Court of Human Rights is Protocol 13 which prohibits the death penalty. Protocol 13 was extended to the territories in 2007, after the United Kingdom had already abolished the death penalty in the territories.<sup>109</sup>

#### The Oliari Case

On October 21, 2015, the European Court of Human Rights made a landmark decision in *Oliari and Others v. Italy*. The case began in 2008 when a gay couple in Italy applied for paperwork to initiate a marriage and where rejected. Under Italian domestic law, same sex couples are not allowed to contract a marriage. However, the court ruled that Article 8 of the European Convention on Human Rights not only prohibited the government from arbitrarily interfering in family life, but the government also had positive obligations to ensure these rights were respected. The court ruled that Italy had a

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<sup>109</sup> I.D. Hendry and Susan Dickson, *British Overseas Territories Law* (Oxford: Hart, 2011), 173.

responsibility and obligation to provide civil unions to gay couples with the same rights as heterosexual couples, since there is no discernable reason to not provide for such unions.<sup>110</sup>

As mentioned, the court cited article 8, which states:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

The court also cited article 14 which provides for equal treatment under the law by stating:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”<sup>111</sup>

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<sup>110</sup> European Court of Human Rights, “Case of Oliari and Others v. Italy,” July 21, 2015, (accessed September 12, 2015). <http://hudoc.echr.coe.int/eng?i=001-156265>

<sup>111</sup> European Court of Human Rights, “Case of Oliari and Others v. Italy,” July 21, 2015, (accessed September 12, 2015). <http://hudoc.echr.coe.int/eng?i=001-156265>



Therefore, the court found that the couple in the case were arbitrarily denied rights that were given to opposite sex couples. However, the court did not go so far as to declare Italy must provide for same sex marriage, only equal benefits for same sex couples.<sup>112</sup>

According to Helfer and Voeten, rulings by the European Court of Human Rights have an effect on the behavior of not just the states party to the ruling, but other states within the Council of Europe as well.<sup>113</sup> In fact the ruling in *Oliari v. Italy* was but one of many such decisions in which the ECHR has ruled in favor of protections for LGBT persons. Relevant justification used by the court for these rulings include articles 3, 8, 11, and 14. Article 3 prohibits inhumane or degrading treatment, while article 8 provides for a right to private and family life. Article 11 provides for both the freedom of association as well as assembly, while article 14 prohibits discrimination.<sup>114</sup>

The situation developing in Europe with the rapid recognition of the human rights of LGBT people by the European Court of Human Rights and other institutions did not go unnoticed by the British Overseas Territories. This is especially true in the Cayman Islands. The issue of LGBT rights has been a prominent issue in the discussion of human rights since the debate over the 2009 constitution.

#### The Situation in the Cayman Islands for Same Sex Couples

In March of 2009, Boris Dittrich, the director of Human Rights Watch's Lesbian, Gay, Bisexual and Transgender Rights Program, sent a letter to the governor of the

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<sup>112</sup> European Court of Human Rights, "Case of *Oliari and Others v. Italy*," July 21, 2015, (accessed September 12, 2015). <http://hudoc.echr.coe.int/eng?i=001-156265>

<sup>113</sup> Laurence Helfer and Erik Voeten, "International Courts as Agents of Legal Change: Evidence from LGBT Rights in Europe," *International Organization* 68, no. 1 (January 2014): 77, *Political Science Complete*, EBSCOhost (accessed September 12, 2015).

<sup>114</sup> European Court of Human Rights, *Sexual Orientation Issues*, July 2015 (accessed November 11, 2015), [http://www.echr.coe.int/Documents/FS\\_Sexual\\_orientation\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Sexual_orientation_ENG.pdf)

Cayman Islands expressing concerns over the progression of the constitution. Dittrich expressed his concern over the document's lack of a guarantee of equal protection or freedom from discrimination. Dittrich also noted that the United Kingdom has extended the International Covenant on Civil and Political Rights to the Cayman Islands and that the covenant prevents discrimination based on sexual orientation. In regard to the European Court of Human Rights, Dittrich had this to say:

“The United Kingdom has also extended the European Convention on Human Rights, and therefore the jurisprudence of the European Court of Human Rights, to the Cayman Islands. The European Court of Human Rights has established a consistent jurisprudence in support of the elimination of discrimination based on sexual orientation and gender identity.”<sup>115</sup>

Since the establishment of the 2009 constitution there have been further controversies in the Cayman Islands over the rights of LGBT persons. In 2015 a firestorm of controversy was started concerning LGBT rights in the Cayman Islands. In January of that year, the Cayman Islands Law School hosted a lecture series entitled “Law and Equality in the Modern Day.” The series focused on LGBT and gender rights and roles in modern society. The lecture series was reported to be very well attended by community members and was widely publicized in local media outlets.<sup>116</sup>

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<sup>115</sup> Boris O Dittrich, Lesbian, Gay, Bisexual and Transgender Rights Program, Human Rights Watch, “Letter to the Governor of the Cayman Islands,” March 11, 2009, <https://www.hrw.org/news/2009/03/11/letter-governor-cayman-islands>

<sup>116</sup> Cayman News Service, “Law School Defends Lecture Series on LGBT Rights,” *Cayman News Service*, August 24, 2015, (accessed November 17, 2015), <https://caymannewsservice.com/2015/08/law-school-defends-lecture-series-on-lgbt-rights/>

In July of 2015, the European Court of Human Rights issued its ruling in the case of *Oliari v Italy*. The Cayman Islands Human Rights Commission quickly responded to the court's ruling. The response by the Human Rights Commission reiterated that the European Court of Human Rights has jurisdiction over the Cayman Islands. The Human Rights Commission, while recognizing that the Caymanian Constitution did not provide for same sex marriage, mentioned that the ban on same sex marriage does not prohibit civil unions for same sex couples.<sup>117</sup>

In August 2015, Anthony Eden, a member of the Legislative Assembly of the Cayman Islands, made a speech in support of his own motion to reiterate the constitution's definition of marriage as solely between a man and a woman. The legislation was a reaction to the Cayman Islands Human Rights Commission's recommendation that the government of the Cayman Islands implement a system of civil unions for same sex couples based on the *Oliari* case.<sup>118</sup>

Mr. Eden's rhetoric in support of his motion received nearly as much attention as the motion itself. His comments were noted in local media as being quite vociferous and antagonistic. Eden conflated homosexuality with Satanism and used the Bible as a basis

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<sup>117</sup> Cayman Human Rights Commission, "Statement on the European Court of Human Rights' Ruling in Favor of Same Sex Unions," (accessed November 14, 2015), <https://caymannewsservice.com/wp-content/uploads/2015/07/HRCs-Statement-on-the-European-Court-of-Human-Rights-Ruling-in-Favour-of-Same-Sex-Unions.pdf>

<sup>118</sup> Editorial Board, "Mr. Eden's Regrettable Remarks on the Floor of the House," *Cayman Compass*, August 20, 2015, (accessed September 12, 2015), <http://www.compasscayman.com/caycompass/2015/08/20/Mr--Eden%E2%80%99s-regrettable-remarks-on-the-floor-of-the-House/>

for rejecting LGBT rights.<sup>119</sup> However, Mr. Wayne Panton, another member of the Legislative Assembly, later spoke out in support of LGBT rights.<sup>120</sup>

James Austin-Smith of the Cayman Islands Human Rights Commission issued a press release in response to Mr. Eden's remarks. Austin-Smith referred to Mr. Eden's comments as hate speech. He stated that the remarks made by Mr. Eden on the floor of the Legislative Assembly were intended to incite hatred toward the LGBT community and included allusions to bestiality, pedophilia, and 'deviant behavior' when he spoke of homosexuality. He even made threats of violence against homosexuals. Despite the vitriol, Mr. Eden's resolution passed without opposition.<sup>121</sup> Even after the uproar and controversy, Mr. Eden reiterated his remarks. Mr. Eden refused to accede calls in the community and press to resign and doubled down on his remarks.

On the 21<sup>st</sup> of October, the Premier of the Cayman Islands, Alden Mclaughlin, sent a letter to James Austin-Smith. This was in response to Austin-Smith's official statements as chair of the Cayman Islands Human Rights Commission. The Human Rights Commission later published the correspondence in local media. Mr. Mclaughlin

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<sup>119</sup> Editorial Board, "Mr. Eden's Regrettable Remarks on the Floor of the House," *Cayman Compass*, August 20, 2015, (accessed September 12, 2015), <http://www.compasscayman.com/caycompass/2015/08/20/Mr--Eden%E2%80%99s-regrettable-remarks-on-the-floor-of-the-House/>

<sup>120</sup> Cayman News Service, "Law School Defends Lecture Series on LGBT Rights," *Cayman News Service*, August 24, 2015, (accessed November 17, 2015), <https://caymannewsservice.com/2015/08/law-school-defends-lecture-series-on-lgbt-rights/>

<sup>121</sup> James Austin-Smith, "Discrimination, Homophobia, Privilege and Hate Speech in Cayman Islands Legislative Assembly," *Cayman I News*, August 23, 2015, (accessed September 12, 2015), <http://www.ieyenews.com/wordpress/discrimination-homophobia-privilege-and-hate-speech-in-cayman-islands-legislative-assembly/>

indicated that he and his government had no mandate to institute same sex unions in the Cayman Islands as his government had not run their campaign on that issue.<sup>122 123</sup>

However, Mr. McLaughlin did state that he was willing to explore the option of changing immigration policy to recognize a same sex partner as a dependent and allow that person to remain in the territory under the same circumstances as a wife or husband.

Mr. McLaughlin also alluded to the Oliari case and its recommendation for ‘gradual maturation’ of rights for same sex couples rather than immediate equality on the basis of marriage. He stated that his government would follow this gradual approach.<sup>124</sup> In

November of 2015, Anthony Eden announced his intention to resign membership in the ruling People’s Progressive Movement government and join the opposition in response to the Premier’s intention to look into allowing same sex partners to be categorized as dependents.<sup>125126</sup>

The issue of the Oliari case and government recognition of same sex couples was further brought up in the local media in the Cayman Islands when Leonardo Raznovich, a gay law professor who had organized the Cayman Islands Law School’s lecture series on

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<sup>122</sup> Alden McLaughlin to James Austin-Smith, October 21, 2015, “Re:Recognition of Same Sex Unions,” *Cayman News Service*. <https://caymannewsservice.com/wp-content/uploads/2015/11/Letter-to-the-HRC-from-premier-Re-Recognition-of-Same-Sex-Unions-21-Oct-2015.pdf>

<sup>123</sup> Cayman News Service, “No Gay Unions but CIG to Look at Dependents,” *Cayman News Service*, November 23, 2015, (accessed November 27, 2015). <https://caymannewsservice.com/2015/11/no-gay-unions-but-cig-to-look-at-dependents/>

<sup>124</sup> Alden McLaughlin to James Austin-Smith, October 21, 2015, “Re:Recognition of Same Sex Unions,” *Cayman News Service*. <https://caymannewsservice.com/wp-content/uploads/2015/11/Letter-to-the-HRC-from-premier-Re-Recognition-of-Same-Sex-Unions-21-Oct-2015.pdf>

<sup>125</sup> Cayman News Service, “Eden Remains Unmoved Over Reaction to Homophobia,” *Cayman News Service*, November 26, 2015, (accessed November 26, 2015), <https://caymannewsservice.com/2015/08/law-school-defends-lecture-series-on-lgbt-rights/>

<sup>126</sup> Cayman News Service, “Eden Jumps PPM Ship,” *Cayman News Service*, November 26, 2015, (accessed November 26, 2015), <https://caymannewsservice.com/2015/08/law-school-defends-lecture-series-on-lgbt-rights/>

LGBT rights, was told his contract would not be renewed with the law school. Mr. Raznovich, along with his partner, was a foreign worker on a work permit. Raznovich decided to apply to be listed as a dependent on his partner's work permit, however the Permit Board refused the request. Raznovich has argued that the Oliari ruling applies to the Cayman Islands and that the Permit Board cannot discriminate against him because he is in a same sex relationship, rather than an opposite sex relationship.<sup>127</sup> Mr. Raznovich has also contacted Samuel Budgin, the territory's Attorney General. He urged Mr. Bulgin to legally rectify the situation and bring the Cayman Islands in line with the European Court of Human Rights' ruling in the Oliari case.<sup>128</sup>

In July of 2016, the Immigration Appeals Tribunal ruled in favor of Mr. Raznovich, recognizing him as a dependent of his partner for immigration purposes. After originally rejecting the appeal, the tribunal found in favor of Raznovich eight months later. This ruling had the effect of recognizing their foreign marriage for immigration purposes, while not altering Caymanian law on marriages performed within the territory. The change in the ruling by the court came after Raznovich, a former lecturer at Truman Bodden Law School, argued that the recent decision in the Oliari case in the European Court of Human Rights sets a precedent for recognition of the rights of same sex couples without ruling on the issue of same sex marriage itself. In his public response to the decision, Mr. Raznovich reflected on the statement of the newly

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<sup>127</sup> James Whittaker, "Cayman's Human Rights Issues to Be Aired Internationally," *Cayman Compass*, September 10, 2015, (accessed September 12, 2015), <http://www.compasscayman.com/caycompass/2015/09/10/Cayman-s-human-rights-issues-to-be-aired-internationally/>

<sup>128</sup> James Whittaker, "Gay Couple Challenges Immigration Decision," *Cayman Compass*, September 3, 2015, (accessed September 12, 2015), <http://www.compasscayman.com/caycompass/2015/09/03/Gay-couple-challenge-Immigration-decision/>

appointed Minister for British Overseas Territories, Baroness Anelay, who stated, “The strongest, safest and most prosperous societies are those that value diversity and strive to address all forms of discrimination against all people, including on the basis of sexual orientation or gender identity.”<sup>129</sup>

In the same month in which the tribunal ruled in favor of Mr. Raznovich, an LGBT rights conference was held in the Cayman Islands and organized by Mr. Raznovich, entitled “Queering Paradigms,” on June eleventh and twelfth of 2016. McKeeva Bush, leader of the Cayman Democratic Party, and Leader of the Opposition at the time, criticized the conference and what he saw as the British appointed Governor’s support of it. Governor Kilpatrick attended a dinner fundraiser for the event, and her daughter, Olivia Connolly, assisted in organizing the event.

Anthony Eden, noted previously for his strong condemnation of LGBT rights in the Legislative Assembly, spoke against the conference as well. He, along with all other members of the opposition, met with the Cayman Ministers Association to convey their displeasure with the conference. The Cayman Ministers Association, through their Chairman, Torrance Bobb, expressed opposition to any effort to alter the marriage law in the Cayman Islands. Eden indicated that it was ‘foreign elements’ that were trying to alter Caymanian culture. Mr. Bobb stated that the conference was part of a war being waged against Caymanian traditional values and culture.<sup>130</sup>

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<sup>129</sup> Charles Duncan, “Gay Couple Wins Work Permit Appeal,” *Cayman Compass*, July 24, 2016, accessed September 16, 2017, <https://www.caymancompass.com/2016/07/24/gay-couple-wins-work-permit-appeal/>

<sup>130</sup> Kelsey Jukam, “Politicians, Church Ministers Oppose LGBT Conference,” *Cayman Compass*, June 7, 2016, accessed September 16, 2017, <https://www.caymancompass.com/2016/06/07/politicians-church-ministers-oppose-lgbt-conference/>

After the recent controversies involving the same sex marriage debate in the country, the opposition in the Legislative Assembly brought a motion for a referendum on same sex marriage to the floor. This motion was supported by Mckeeva Bush, leader of the opposition, and was introduced by Anthony Eden, the most vocal opponent of same sex marriage in the Legislative Assembly. The People's Progressive Movement, led by Premier Alden McLaughlin, did not support the motion. McLaughlin had previously controversially supported a gradual approach to recognizing rights of same sex couples in the territory, resulting in Mr. Eden and others on the government bench resigning their membership in the party and joining the opposition.

The vote fell upon party lines, with the nine People's Progressive Movement government members voting no, and the eight members of the opposition voting in favor of the referendum. The hopes of the opposition that putting the issue up to a vote of the people would result in a rejection of same sex unions were dashed. Baroness Anelay, Minister for the British Overseas Territories, had come to the Cayman Islands and spoke to the Legislative Assembly before the vote occurred. She stated that while the United Kingdom would not force the issue of same sex marriage upon the Cayman Islands, denial of rights to same sex couples put the Cayman Islands in breach of its legal obligations, which creates a legal imperative for change to the territory's law.<sup>131</sup>

Whether or not the Cayman Islands and other British Overseas Territories have a responsibility to provide same sex partners with benefits rests on two sets of criteria.

First, there is the question of the European Court of Human Rights ruling and intention

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<sup>131</sup>Brent Fuller, "Legislators Reject Motion on Gay Marriage Referendum," *Cayman Compass*, October 9, 2016, accessed September 16, 2017, <https://www.caymancompass.com/2016/10/09/legislators-reject-motion-on-gay-marriage-referendum/>



with the Oliari case and other LGBT related cases and whether or not they set a precedent. Secondly, there is the question of whether or not the European Convention on Human Rights, and thus the court as well, has jurisdiction that extends to the British Overseas Territories, and the Cayman Islands in particular.

The issue of jurisdiction is covered by articles 46 and 56 of the European Convention on Human Rights.<sup>132</sup> As previously explained, article 46 states that parties to rulings by the European Court of Human Rights are bound to uphold the court's rulings. Article 56 states that territories under the control of signatories of the convention may be included in the jurisdiction of the court by the administering power.<sup>133</sup> The United Kingdom, on behalf of its overseas territories has already extended the European Court of Human Rights' jurisdiction to these territories. Under protocol 13, which abolished the death penalty, the British Overseas Territories were forced to comply with the convention and the court.<sup>134</sup>

The second issue concerning whether or not the Cayman Islands and other British Overseas Territories are under any obligation to grant same sex couples rights is the issue of the Oliari case itself. In the Oliari case the court ruled that articles 3, 8, 11, and 14 were not being upheld by Italy. Article 3 provides for the prohibition of inhumane or degrading treatment. Article 8 provides for the right to a family life, which includes positive obligations for the government to provide certain benefits. Article 11 protects the freedom of association and assembly for all people. Perhaps most importantly, article 14

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<sup>132</sup> European Court of Human Rights, *European Convention on Human Rights*, November 4, 1950, accessed September 12, 2015, [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)

<sup>133</sup> European Court of Human Rights, *European Convention on Human Rights*, November 4, 1950, accessed September 12, 2015, [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)

<sup>134</sup> I.D. Hendry and Susan Dickson, *British Overseas Territories Law* (Oxford: Hart, 2011), 173.

prohibits any form of discrimination by the government.<sup>135</sup> By refusing to allow same sex couples the benefits that opposite sex couples had, the European Court of Human Rights ruled that Italy violated the European Convention on Human Rights.

While the European Court of Human Rights did not rule directly on the obligation of the Cayman Islands and other British Overseas Territories to provide equal treatment to same sex couples, it has set a precedent for future rulings. In this case, along with many others the court has ruled on, the European Court of Human Rights has a record of recognizing the rights of LGBT persons and ruling against discriminatory practices by European governments.

### Conclusion

While the Cayman Islands does not have an immediate obligation to provide equal benefits for same sex couple as a result of the Oliari ruling, the case sets a precedent that the court would likely follow in any future litigation by same sex couples from the overseas territories. The actions of the Cayman Islands Human Rights Council, the ruling People's Progressive Movement government, and Premier Alden Mclaughlin of the Cayman Islands all indicate that the Cayman Islands will begin slowly moving in the direction of granting limited rights to same sex couples. This is a direct result of the Oliari ruling by the European Court of Human Rights.

Although there has been much controversy and political debate within the Cayman Islands concerning LGBT rights and same sex unions, there is very little of the violence, intimidation, and discrimination faced by the LGBT community in Jamaica.

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<sup>135</sup> European Court of Human Rights, Sexual Orientation Issues, July 2015 (accessed November 11, 2015), [http://www.echr.coe.int/Documents/FS\\_Sexual\\_orientation\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Sexual_orientation_ENG.pdf)

While the Cayman Islands and other British Overseas Territories face concerns over the treatment of LGBT within society, they have advanced farther than many of their neighbors.

While in Jamaica, the police have been noted for failing to protect LGBT people in many cases, and in some cases even condoning violence against them, the police in the Cayman Islands have faced little of the same criticism. With the exception of the incident of a same sex tourist couple arrested for publicly kissing in 2008, there have been few reports of police violating the rights of LGBT persons in the Cayman Islands. As mentioned previously, the United Kingdom has used its authority over the British Overseas Territories to proliferate its own human rights agenda. In the case of the Royal Cayman Islands Police, the territorial Governor, appointed by the United Kingdom, is in charge of the police force.<sup>136</sup>

There have also been remarkably few hate crimes committed against LGBT people in the Cayman Islands. While violence has been one of the hallmarks of the LGBT community in Jamaica, Cayman's LGBT community has faced little of that same harsh treatment. This may also be related to the overall crime rate disparity between the two countries. With a total murder rate of 14.74 per 100,000, the Cayman Islands murder rate is quite lower than Jamaica at 61.66 per 100,000, in 2009.<sup>137</sup>

One exception to this trend was an incident in 2008 involving the death of a gay foreigner. Six years later, two Caymanians were separately tried and convicted of killing

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<sup>136</sup> *The Cayman Islands Constitution Order 2009*, Caribbean and North Atlantic Territories, no. 1379, Part 2, Section 55, June 17, 2009. <http://www.legislation.gov.uk/uksi/2009/1379/contents/made>

<sup>137</sup> *United Nations Office of Drugs and Crime*, "Intentional Homicide, Counts and Rates per 100,000 Population," United Nations, accessed September 16, 2017, <https://data.unodc.org/>

the Swiss banker, Frederic Bise, who resided in the territory. Mr. Bise, was a forty-year-old gay man who resided in the district of West Bay. Mr. Bise had been strangled and beaten and then stuffed into the trunk of his car which was then set ablaze in his driveway. One of the men responsible, Leonard Ebanks, then confessed to the crime to two witnesses, who stated that he had admitted to the murder and to stealing from the deceased. Ebanks claimed that the motive for the murder and robbery was that the man owed his accomplice, Chad Anglin, money and that the two were gay. The coroner confirmed that Bise had sex prior to his death and was last seen alive on closed circuit televisions meeting Anglin at a jerk chicken stand on February 8, 2008. The exact motivations for the murder remain unclear. The prosecutor, Simon Russell-Flint, stated “Was it to take advantage of him for sexual purposes, or was it so that the homosexual Mr. Bise might be assaulted or robbed of his possessions? ...Or was it so that the gay Frederic Bise could meet Mr. Anglin’s cousin – this defendant, Leonard Ebanks?...What we do know is that between the time of leaving the bar with Chad Anglin and the following morning, he was horrifically and brutally murdered.”<sup>138</sup>

In summary, the relationship between the Cayman Islands and the United Kingdom has had a tremendous impact on LGBT rights in the territory. The United Kingdom has exerted direct and indirect influence over the human rights situation in the Cayman Islands and the other British Overseas Territories. While residents and local politicians in the territories have not always been in agreement with British policy in this

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<sup>138</sup> James Whittaker, “Defendant ‘Confessed’ to Murder of Frederic Bise, Court Hears,” *Cayman Compass*, November 13, 2014, accessed September 16, 2017, <https://www.caymancompass.com/2014/11/13/defendant-confessed-to-murder-of-frederic-bise-court-hears/>

area, the administering power has nonetheless used its influence to protect LGBT people and attempt to institute social and political change within the territory.

Through the powers of the Governor, the United Kingdom still holds tremendous reserved powers. As seen in the Turks and Caicos, the Governor can, in extraordinary circumstances, circumvent locally elected leaders to ensure good governance and the safeguard British interests. Governors may also publicly or privately support LGBT rights and act as a power source of influence. As seen in the Cayman Islands, Governor Kilpatrick quietly supported the “Queering Paradigms” conference planned by her daughter and local LGBT figure, Leonardo Radnovich. The Governor also has powers concerning the police and security. With the British-appointed official in control of the police, the United Kingdom’s philosophy on the treatment of LGBT people can be ensured.

Orders in council are another way in which the United Kingdom can impose its authority upon the British Overseas Territories directly. As seen in the cases of abolition of capital punishment and decriminalization of homosexuality. The United Kingdom showed its willingness to protect the rights of LGBT people in the British Overseas Territories, even if it meant circumventing locally elected leadership and the will of the local populaces.

The international human rights obligations of the United Kingdom have also been shown to extend to the Cayman Islands and other British Overseas Territories. While these obligations, such as membership in the European Court of Human Rights, were entered into by the United Kingdom, their jurisdiction extends to the Cayman Islands and the other British Overseas Territories.

The British government also instituted modernized constitutions in many of the British Overseas Territories. These constitutions have enshrined codified bills of rights into the legal framework of the territories. They have also established human rights commissions such as the Cayman Islands Human Rights Commission, to oversee human rights in the territories and act as a sounding board for human rights concerns. The Cayman Islands Human Rights Commission did just that when Anthony Eden, member of the Cayman Islands Legislative Assembly, spoke out in opposition to LGBT rights. The chair of the commission spoke out against Mr. Eden's comments and threw the support of the commission behind LGBT rights. The British authorities have also funded human rights campaigns and initiatives in the territories to sway public opinion on these issues.

The United Kingdom has also used both public and private pressure to ensure its human rights obligations are followed. Baroness Anelay, Minister for British Overseas Territories, did not shy away from publicly encouraging the Cayman Islands to act to further protect the rights of LGBT people when she spoke before the Legislative Assembly. The administering power has become increasingly vocal in its support for increased human rights protections in the British Overseas Territories.

In conclusion, the Cayman Islands' LGBT community has benefited from the territory's relationship to the United Kingdom. The United Kingdom, as the administering power of the territory, had directly and indirectly pressured the territory to move toward a more tolerant and accepting atmosphere for LGBT people.

## CHAPTER VI- CONCLUSION

The continuation of British rule in the Cayman Islands has produced a far better situation for LGBT residents as compared with Jamaica, which chose independence in 1962. Jamaica and the Cayman Islands share common elements of their history, language, religion, culture, and politics, yet in many aspects seem worlds apart. Jamaica, an impoverished nation plagued by crime has nearly 50 times the population of the Cayman Islands, but with only one fourth of the per capita Gross Domestic Product. While Jamaica wrestles with issues such a poverty, unemployment, and emigration, the Cayman Islands have enjoyed a bounding economy and have had an influx of foreign workers. Sharing close ties throughout their history, dating to the capture of the Islands by England from Spain, the two are a logical comparison. While the Cayman Islands chose to remain under the authority of the United Kingdom after the collapse of the West Indies Federation, Jamaica chose the path of independence within the Commonwealth in 1962. This divergence impacted the development of the two nations political and socially for the coming decades.

The political and social discussion around human rights has been notable in both countries. The situation for LGBT people is one of the notable distinctions that have developed between the two in the intervening time since Jamaican independence. While Jamaica's past history as a colony of the United Kingdom has imbued its politics and culture with older Victorian mores regarding LGBT people, the United Kingdom's more recent relationship with the Cayman Islands as the administering power has led to more social and political tolerance toward LGBT people. Thus British colonialism has affected

LGBT rights in the two countries in differing ways, according to whether or not they continued their relationship with the United Kingdom as an administering power. With the Cayman Islands choosing the path of voluntary colonialism by becoming a British Dependent Territory and later British Overseas Territory, LGBT people in the Cayman Islands have been afforded a more tolerant circumstance under British rule.

The British legacy in Jamaica is pervasive through its politics, culture, and national consciousness. Like many other settlement colonies, such as Canada, Australia, South Africa, and others, Jamaica's history is inextricably connected to British history and the wider context of the British Empire. With the vast majority of the population composed of the ancestors of slaves brought to the island by the British to work the sugar cane plantations, the historical context of Jamaica within the West Indian and British context is important.

Politics and religion have both been influenced by Jamaica's connection to British culture. The Jamaican criminalization of 'buggery' is one of the clearest example of the influence of British law and culture upon the island nation. As in many Commonwealth realms, Jamaica has inherited the British system of jurisprudence along with many of its laws. Jamaica inherited the British law on 'buggery,' or sex between men, which has its roots in England going back nearly half a millennia.

British religion also affected Jamaican culture and social norms. Inheriting many of the social mores brought by Anglicanism and other Protestant faiths, Jamaica's religious community has seen significant opposition to increased LGBT rights. Through the early influence of Christianity upon slaves in Jamaica's history, the religion took hold and became an intricate part of Jamaican culture.



While Jamaica's past relationship to the United Kingdom has led to a poor situation for its LGBT community, the Cayman Islands' current relationship has done quite the opposite. The Cayman Islands' continued relationship with the United Kingdom via voluntary colonialism as described by Bodden, has insulated it from many of the issues faced by Jamaica and its LGBT community. British influence has directly and indirectly benefited the LGBT community in the island territory.

Caymanian politics has seen increased discussion of LGBT rights in recent years, just as Jamaican politics. However, in the Cayman Islands much of the political conversation has been catalyzed by British or European movement on the issue. Much of this discussion has revolved around British actions, via the law and public pressure.

Caymanian politics was clearly affected by the recent ruling of the European Court of Human Rights regarding the rights of same sex couples in *Oliari v. Italy*. The case, which stated that European nations have a responsibility to provide same sex couples legal and social benefits similar to those afforded to married opposite sex couples, set off a firestorm within Caymanian politics. While the case did not rule on the Cayman Islands specifically, the territory along with other British Overseas Territories is under the jurisdiction of the European Court of Human Rights, via the United Kingdom's relationship with the Council of Europe. The Caymanian Premier, Alden McLaughlin's tacit support toward moving the Cayman Islands to recognition of some rights for same sex couples caused a split within his own party, instigating Member of the Legislative Assembly Anthony Eden and others to form a vocal opposition to any recognition of same sex couples on religious and cultural grounds.

While the Oliari case has not yet directly affected the Cayman Islands, the United Kingdom as the administering power for the territory has imposed its current moral and political attitudes toward LGBT rights directly by other means. Through an orders-in-council, the United Kingdom decriminalized sodomy, or ‘buggery’ in the Cayman Islands and other British Overseas Territories in 2000. Although there remained much support within society and politics for the law, just as in Jamaica, the United Kingdom decided to impose the change upon the territories with or without their consent. This clearly illustrates the effects of British rule on the Cayman Islands’ LGBT community as compared to Jamaica’s LGBT community.

The United Kingdom has also used softer methods of influence on the human rights agenda in the British Overseas Territories, and LGBT rights in particular. Using political pressure directly upon the locally elected governments and publicly supporting increased LGBT rights, British government authorities have made their preferences known for a reevaluation of the treatment of LGBT people within the territories. The United Kingdom has funded human rights campaigns and supported the creation of Human Rights Commissions through new constitutions that included codified rights for the first time in many of the territories’ histories, including the Cayman Islands.

In summary, British historic and political influence has impacted the rights of LGBT people within the Cayman Islands and Jamaica. While Jamaica’s historic ties to the United Kingdom and its Victorian mores and values, have led to a difficult situation for many LGBT people, the Cayman Islands’ current relationship with the United Kingdom has acted as a protective element for LGBT people in the territory. This fits within the literature for the larger picture within the British West Indies and the entirety

of the former British Empire. The United Kingdom's influence over protection of LGBT rights in the British Overseas Territories brings up important questions concerning the relationship between the administering power and its territories, the extent of local autonomy, and the United Kingdom's human rights agenda and how it implements it on an international scale.

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