

Constructing a Legal Gap Analysis: Barbados and LGBTQ+ persons

This paper is the first in a planned series of articles which will assist in the development of a legal gap analysis in Barbados, focusing on LGBTQ+ persons and their rights and protections under the law. In 2022, the Barbados High Court, in the case of Holder-McClean-Ramirez et al v Attorney General of Barbados (2022) 44/220 determined that ss9 and 12, which criminalised buggery and serious indecency, were unconstitutional. This decriminalisation of same-sex sexual relations through judicial means, as opposed to Parliamentary, created a lacuna in the law regarding rights and protections for LGBTQ+ persons which is yet to be filled. This paper will present an overview of a suggested structure for the legal gap analysis. Further papers will focus on specific aspects, including an examination of the current legal position with regard rights and protections recognised (and absent) and the conceptualisation of their potential position on the Barbadian legal landscape within its socio-cultural framework.

Keywords: Barbados, LGBTQ+, legal gap analysis, enslavement, colonisation

Introduction

Barbados

Barbados is a small island, located slightly outside of the Caribbean island chain, positioned in the Atlantic Ocean between north and south America. It was discovered (uninhabited) by the English in 1625, settled in 1627, and remained a colony of Great Britain until independence in 1966. It's population is primarily black and Christian, both direct consequences of enslavement which operated from 1627 – 1838. Its population is approximately 280,000, and its capital city is Bridgetown.

Barbados had criminalised same-sex sexual activity since colonisation, and continued to do so until 2022, when the High Court in Barbados ruled that such criminalisation was unconstitutional. In doing so, the court simultaneously repealed codified colonial-era jurisprudence criminalising buggery and serious indecency and opened the door for significant legal change regarding discrimination and equality of LGBTQ+ persons in Barbados. This article seeks to develop a structure through which to place any legal change within the context of Barbadian society and culture, contextualising legislative reform within the cultural and societal norms of Barbados.

Legal History of Buggery and Serious Indecency in Barbados

The offences of serious indecency and buggery as existed in Barbados until 2022 derive much of their history from the legal and societal structures in place in the UK during their formation, after which they were imported into Barbados

1 through coloniality.

2
3 *Buggery*
4

5 The offence of buggery finds its foundations in the Bible, specifically the Old
6 Testament. Found within ‘Divers laws and ordinances’ in the Old Testament Book
7 of Leviticus is a list of prohibited sexual activities, which includes:

8
9 If a man ... lie with mankind, as he lieth with a woman, both of them have committed
10 an abomination: they shall surely be put to death; their blood shall be upon you.¹
11

12 In England and Wales, the common law offence of buggery was codified by
13 Henry VIII,² and repealed during the reign of Mary I in 1553.³ It was then re-enacted
14 by Elizabeth I in 1562,⁴ with reasoning that a lack of statutory provision on buggery
15 had resulted in “‘divers evil disposed persons’ having become ‘more bold to commit
16 the ... most horrible and detestable vice of buggery ... to the high displeasure of
17 Almighty God.’”⁵ The offence remained in force in England and Wales, in varying
18 forms, until 1967, when it was repealed.⁶

19 During the 19th century, the British public were hostile towards
20 homosexuality,⁷ and it was on these foundations of public condemnation and
21 religious association that the Offences Against the Person Act 1861 (“OAPA 1861”)
22 was drafted which criminalised buggery in England and Wales.⁸ Despite limited
23 data on the prevalence of same-sex sexual activity in Barbados, after the abolition
24 of slavery in the early 29th century, the desire for the codification of criminal laws
25 in British colonies gained momentum.⁹ On the heels of the 1861 OAPA in England
26 and Wales came the Barbadian *Offences Against the Person Act 1868* (OAPA
27 1868). S62 OAPA 1868 codified buggery in Barbados and was identical to Section

¹Leviticus 20:13. Detailed in M Kirby, ‘The sodomy offence: England’s least lovely criminal law export?’ in C Lennox & M Waites (eds.) *Human Rights, Sexual Orientation and Gender Identity in The Commonwealth: Struggles for Decriminalisation and Change* (School of Advanced Study, University of London, 2013)

²Sodomy Statutes (1533-1563) The Whole Volume of Statutes at Large, 2 parts (London, 1587), 25 Henry VIII, CH. 6 (1533-1534) 2

³An Act Repealing Certain Treasons, Felonies, And Praemunire 1 Mary, CH. 1 (1553)17

⁴Elizabeth revived the law as created by Henry VIII

⁵P Johnson, ‘Buggery and Parliament, 1533–2017’ University of York, *Parliamentary History*, Vol. 38, pt. 3 (2019), 325–341, 328

⁶S1 (1) Sexual Offences Act 1967.

⁷J Gaskins, C Lennox, M Waites (eds) ‘Buggery’ and the Commonwealth Caribbean: A Comparative Examination of the Bahamas, Jamaica, and Trinidad and Tobago, Human rights, Sexual Orientation, and Gender Identity Human Rights Consortium, Institute of Commonwealth Studies (School of Advanced Study, University of London, 2013) 431

⁸S1 (1) Sexual Offences Act 1967, a homosexual act in private shall not be an offence provided that the parties consent thereto and have attained the age of twenty-one years.

⁹R.S. Wright, an English barrister, asked in 1870 by the Colonial Office to draft a criminal code for Jamaica to act as a model for all the colonies J Gaskins, C Lennox, M Waites (eds) ‘Buggery’ and the Commonwealth Caribbean: A Comparative Examination of the Bahamas, Jamaica, and Trinidad and Tobago, Human rights, Sexual Orientation, and Gender Identity Human Rights Consortium, Institute of Commonwealth Studies (School of Advanced Study, University of London, 2013) 431

1 61 of the English OAPA 1861. Its criminalisation remained, with the latest iteration
2 included in the Barbados Sexual Offences Act 1992 under section 9:

3
4 Any person who commits buggery is guilty of an offence and is liable on conviction
5 on indictment to imprisonment for life.

6
7 *Serious Indecency*

8
9 In 1885, the British Parliament passed the Criminal Law Amendment Act 1885
10 (“An Act to Make Further Provision for the Protection of Women and Girls, the
11 Suppression of Brothels, and Other Purposes”). The 1885 Act was triggered by an
12 exposé in the *Pall Mall Gazette* in which a series of articles alleged child prostitution
13 and slavery in London.¹⁰ Termed the Labouchere amendment, included in the Act
14 was the offence of gross indecency under S11, drafted to criminalise same-sex
15 sexual activity between males which did not constitute buggery. Section 11 read:

16
17 Any male person who, in public or private, commits, or is a party to the commission
18 of, or procures or attempts to procure the commission by any male person of, any
19 act of gross indecency with another male person, shall be guilty of a misdemeanour
20 (...)

21
22 As section 11 explicitly applied only to males, a new clause concerning ‘acts
23 of indecency by females’ was proposed in 1921. The Criminal Law Amendment
24 Bill was debated in Parliament, its justification centred in ‘moral weaknesses’, ‘the
25 falling away of feminine morality’ and the wiles of ‘abandoned females’.¹¹ The
26 House of Commons introduced a provision to match S11 of the 1885 Act,
27 criminalising same-sex sexual activity for females:

28
29 Any act of gross indecency between female persons shall be a misdemeanour and
30 punishable in the same manner as any such act committed by male persons under
31 section eleven of the Criminal Law Amendment Act, 1885 (Hansard HC.
32 Deb. 4th August 1921, vol. 145, cols 1799-1800)

33
34 It succeeded in the House of Commons, but was rejected in the House of Lords,
35 as “the risk of advertising lesbianism was simply too great”¹² with the House noting
36 “To call in the policeman to suppress a vice is the best way to encourage the
37 knowledge of that vice and the spread of it.”¹³

38 Therefore, sexual activity between men was criminalised in England and
39 Wales, but not between women. Through replicated legal provision, mirrored
40 criminalisation traversed the Atlantic to the Commonwealth Caribbean, initially

¹⁰FA Roberts ‘The Maiden Tribute of Modern Babylon’ *Pall-Mall Gazette*

¹¹Mr. Macquisten, Hansard, Criminal Law Amendment Bill [Lords] Volume 145: debated on Thursday 4 August 1921

¹²J Lawson “Sapphic Sedition”: Lesbians and Law in the 1921 Criminal Law Amendment Act, *The Law Bod Blog*, June 2025

¹³Colonel Wedgwood, Hansard, Criminal Law Amendment Bill [Lords] Volume 145: debated on Thursday 4 August 1921

1 criminalising sexual activity between men through the offence of buggery and a S11
2 equivalent. However, when the Barbadian Sexual Offences Act 1992 was drafted,
3 alongside criminalising buggery, provisions were drafted for serious indecency to
4 include ‘persons’ as opposed to ‘males’ as in S11:

5
6 (3) An act of “serious indecency” is an act, whether natural or unnatural by a person
7 involving the use of the genital organs for the purpose of arousing or gratifying sexual
8 desire.

9
10 The enforcement of section 12 in Barbados was sufficiently minimal that
11 jurisprudence is almost non-existent. Corollary to this, or perhaps consequentially,
12 section 12 was ambiguously worded, and crucially, as with section 9, consent, or
13 lack thereof, was omitted. Section 12 was sufficiently vague its language that a
14 perfunctory reading would determine that it included any sexual act committed by
15 anyone, where reproduction was not the aim – i.e. using genitals, for the purpose of
16 arousing.

17 18 19 **The Impact of Criminalising**

20
21 The impact of criminalising same-sex sexual activity through ss9 and 12
22 extended far beyond potential prosecution, including societal and structural
23 inequalities and legal lacunas. In 2022, the Inter-American Commission on Human
24 Rights published a report on admissibility based on a petition against ss9 and 12 of
25 the Barbadian Sexual Offences Act 1992. The petition was brought by three
26 Barbadians alleging Barbados was in violation of numerous obligations under the
27 American Convention on Human Rights. The petition identified a number of harms
28 resulting from the criminalisation of same-sex sexual activity, noting:

29
30 The petition contends that the status quo both violate and encourage violations of
31 multiple rights of LGBT people in Barbados (including the Petitioners). These rights
32 include the right to physical, mental, and moral integrity; the right to equality before
33 the law; the right equal protection of the law; the right to judicial protection, the right
34 to privacy; the right to family, and the right to freedom of expression.¹⁴

35
36 In 2004 and 2014, Human Rights Watch published reports detailing the impact
37 of the laws in Jamaica, noting how their role in facilitating barriers to healthcare,
38 discrimination and societal violence.¹⁵ A 2018 Human Rights Watch report entitled
39 “I have leave to be me: Discriminatory Laws against LGBT People in the
40 Eastern Caribbean”¹⁶ identified a number of discriminatory realities for LGBTQ+

¹⁴Report No. 239/22 Petition 1081 -18 Report on Admissibility Alexa Hoffmann et al, Barbados (OEA/Ser.L/V/II Doc. 242 26 September 2022)

¹⁵Human Rights Watch, Hated to Death, Homophobia, Violence, and Jamaica’s HIV/AIDS Epidemic, November 2004; Human Rights Watch, Not Safe at Home, Violence and Discrimination against LGBT People in Jamaica, October 2014

¹⁶Human Rights Watch “I have leave to be me: Discriminatory Laws against LGBT People in the Eastern Caribbean” (March 2018)

1 persons in the Caribbean:

2
3 I don't come out because my work would be jeopardized.
4 There is a lack of visibility.
5 — Nicholas, St. Kitts and Nevis, February 3, 2017

6
7 I've had coworkers that didn't want me to use certain things. People who didn't want
8 to eat off the same plate, cups... They discriminated against me in my job.
9 — Augusten, St. Vincent and the Grenadines, February 18, 2017

10
11 Areas identified as seats for discriminatory practice in the Human Rights Watch
12 2018 report include harassment, violence and abuse. Below are a selection of quotes
13 from the 2018 report, detailing first-hand accounts of the experiences of LGBTQ+
14 persons:

15
16 *Exclusion from Church:*

17
18 "Some individuals have endured extreme situations to stay in their religious
19 communities. Arthur voluntarily submitted to an exorcism ritual conducted by his
20 church pastor in the hope that it would make him straight. His pastor promised to help
21 him "banish the devils" of homosexual desire. It did not work, but Arthur pretended
22 that it did as he was afraid of being outed as gay. He feared being banished from the
23 church "[b]ecause my sexual orientation [did not change after the exorcism]. I could
24 not complain."¹⁷

25
26 *Bullying and Exclusion from School:*

27
28 "Interviewees recalled multiple types of bullying and harassment that they encountered
29 at school, and the consequences this had for their safety, sense of belonging, and ability
30 to learn. Interviewees said that teachers were ill-equipped to intervene to stop bullying.
31 And in some cases teachers encouraged verbal harassment, or did little to stop it. Some
32 interviewees recalled that teachers themselves made dismissive or derogatory
33 comments about LGBT people, sometimes passing them off as jokes, sometimes being
34 openly disparaging".¹⁸

35
36 *Physical Violence, Assaults and Intimidation:*

37
38 "Actual physical and sexual violence, or threats thereof, are part of the fabric of
39 everyday life for many LGBT people. Fifteen out of 41 interviewees reported
40 experiencing physical violence, while nine had more than one experience of physical
41 violence;"

42
43 *Sexual Violence:*

44
45 "Sexual violence is also an ongoing risk and reporting makes gay men susceptible to

¹⁷Ibid 35

¹⁸Ibid 37

1 ridicule or further questioning by police officers about their sexual orientation, which
2 drives their decision to keep silent about it”.¹⁹

3
4 *Verbal Abuse and Harassment:*

5
6 “Almost all interviewees reported being routinely ridiculed, harassed, threatened, and
7 verbally abused based on their real or perceived sexual orientation or gender
8 identity.”²⁰

9
10 *Inappropriate Police Response:*

11
12 “Most LGBT people interviewed by Human Rights Watch had negative perceptions
13 of the police. They said they expected the police to be biased, unresponsive, and
14 unlikely to investigate crimes against them (...)Several interviewees reported that
15 police asked them inappropriate, intrusive questions about their sex lives”.²¹

16
17 *Emotional and Psychological Abuse: Lack of Mental Health Support:*

18
19 “LGBT people tend to fall through the cracks, as neither government agencies nor civil
20 society organizations have developed services that can fully address their health or
21 psychosocial needs (...) Medical research suggests that poor health outcomes in LGBT
22 populations are in part the result of persistent stigma directed toward them.”²²

23
24
25 **Regional Challenges to the offences of Buggery and Serious Indecency**

26
27 The offences of buggery and serious indecency were once prevalent across the
28 majority of Commonwealth Caribbean jurisdictions. As discussed above, the
29 criminalisation of same-sex sexual activity moved to the region through colonial-
30 era legislative structures, and upon independence, the majority of Commonwealth
31 Caribbean constitutions contained savings clauses which provided a form of
32 protection to pre-independence laws, preventing them from being challenged as
33 unconstitutional. Savings clauses took one of two forms, the first, narrower form
34 protected pre-independence laws authorising but not those mandating.²³ The second,
35 wider form protected all pre-independence laws from challenge unconstitutional.²⁴
36 However, despite protective constitutional structures, multiple jurisdictions have,
37 through various interpretations and challenges, been successful in repealing buggery
38 and serious indecency. Jurisdictions, in addition to Barbados, include Antigua and
39 Barbuda, Belize, St Lucia, St Kitts and Nevis and Trinidad and Tobago. The High

¹⁹Ibid 39

²⁰Ibid 45

²¹Ibid 47

²²Ibid 51

²³As seen in all OECS states, including St Vincent and the Grenadines, St Lucia, St Kitts and Nevis and Dominica. See *Pratt v A-G of Jamaica* [1994] 2 AC 1 (JM PC) and *Hughes v R* [2002] 2 LRC 585 (SLU CA).

²⁴As seen in Trinidad and Tobago, the Bahamas, Jamaica and Barbados.

1 Court of Trinidad and Tobago, in determining the provisions unconstitutional,
2 described the impact of the offences:

3
4 ... In a case such as this, she/he must be able to make decisions as to who
5 she/he loves, incorporates in his/her life, who she/he wishes to live with and make a
6 family with and not have to live under the constant threat, the proverbial "Sword of
7 Damocles", that at any moment she/he may be persecuted or prosecuted. That is the
8 threat that exists at present. It is a threat that is sanctioned by the State and that sanction
9 is an important sanction because it justifies in the mind of others in society who
10 are differently minded that the very lifestyle, life and existence of a person who
11 chooses to live in the way that the claimant does is criminal and is deemed of
12 a lesser value than anyone else. ... In this way, Parliament has taken the deliberate
13 decision to criminalize the lifestyle of persons like the claimant whose ultimate
14 expression of love and affection is crystallized in an act which is statutorily
15 unlawful, whether or not enforced. This deliberate step has meant, in this
16 circumstance, that the Claimants' rights are being infringed.²⁵

17
18 Important to note, expanded upon below, is that none of these repeals have been
19 through Parliament and the ordinary legislative process. All repeals of the offence
20 of buggery and serious indecency across the Commonwealth Caribbean region have
21 been determined by various courts (some the High Court, others Supreme Court)
22 achieved through constitutional challenges brought by a combination of individuals
23 and NGOs. This, it is argued, exacerbates the importance of any legislative review
24 and reform proposals being contextualised within societal and cultural norms, as the
25 executive, comprised of elected officials, as representatives of the population, have
26 not engendered change. Instead, it has been engendered through the (unelected)
27 judiciary.

28
29 *Focus: Barbados*

30
31 The case which determined that buggery and serious indecency were in breach
32 of constitutional rights and guarantees in Barbados was *Holder-McClean-Ramirez*
33 *et al v Attorney General of Barbados*,²⁶ decided by the High Court of Barbados in
34 2022. The claimants in the case comprised of two individuals, Rene Holder-
35 McClean Ramirez and Raven Davina Gill and Equals Inc, an NGO whose work
36 includes the promotion of human rights and sexual reproductive health. The
37 claimants requested the court either declare S9 and S12 unconstitutional and without
38 effect or amend both to include consensual acts by those over 16 years old.
39 Jurisprudence from other jurisdictions where laws with similar wording have been
40 declared unconstitutional were produced in support. In affidavits filed in support of
41 the application, Holder-McClean Ramirez and Gill spoke to their experiences in
42 Barbados as LGBTQ+ persons, discussing harassment, rape, stigmatisation,
43 discrimination, violence and abuse. The third defendant, Equals Inc, highlighted
44 challenges facing its members, reiterating the experiences of the individuals. The
45 defendants, representing the State of Barbados, invoked discussion on separation of

²⁵Jones v Attorney General of Trinidad and Tobago [2018] CV 2017-02072 para 91

²⁶Holder-McClean-Ramirez et al v Attorney General of Barbados (2022) 44/220

1 powers, a nod to Privy Council (JCPC) jurisprudence concerning the mandatory
2 death penalty (*Chandler v Trinidad and Tobago* [2022] UKPC 19) whilst
3 maintaining that the provisions of buggery and serious indecency, in their current
4 form, did not constitute a breach of the Constitution. This position was reaffirmed
5 in the defendant’s affidavit in response which included a denial that S9 and S12
6 ‘fostered intolerance towards members of the LGBT community’(para 37). The
7 High Court determined that the provisions, ss9 and 12, were open to judicial
8 challenge (i.e. they were not ‘saved’ laws) and, upon challenge determined that they
9 were unconstitutional. The decision of the High Court decriminalised same-sex
10 sexual activity in Barbados, paving the way for legal and social reforms for
11 LGBTQ+ persons.

12 It is worthy of note that, whilst it did not occur, the Barbados Attorney General
13 released the following statement following the case:

14
15 I do have some immediate concerns in relation to the striking down of the offences
16 created in section 12 since that section concerns, among other things, indecent sexual
17 conduct with minors. I am awaiting the perfected order and also the written decision
18 of Justice Weekes and unfortunately, that decision will not be available until early in
19 the new year, but when we see the written decision, we would then be able to analyse
20 her legal reasoning and make a decision on whether we appeal or not.²⁷

21
22 However, in 2024, the Sexual Offences (Amendment) Act was passed, which
23 repealed ss9 and 12 of the Sexual Offences Act CAP154.

24
25
26 *Analysing the decision in Holder-McClean-Ramirez et al v Attorney General of*
27 *Barbados*

28
29 As discussed above, this case is one in a line of Constitutional cases heard in
30 the Commonwealth Caribbean which have challenged the offences of buggery and
31 serious indecency. The jurisdiction specific drafting of each savings clause has
32 mandated each claimant overcome the question of whether the law has been saved
33 without recourse to directly applicable jurisprudence, a process which has inevitably
34 delayed or deterred such cases being brought. The findings in *Ramirez* are in line
35 with regional decisions such as *Jamal Jeffers et al v Attorney General of St*
36 *Christopher and Nevis*, *Orden-David et al v Attorney General of Antigua and*
37 *Barbuda*, *Orozo v Attorney General of Belize* and *Jones v Attorney General of*
38 *Trinidad and Tobago*, evidencing the growing body of jurisprudence in the region
39 declaring buggery and serious indecency as breaches of fundamental rights and
40 freedoms. Although the modes adopted to circumvent the operation of savings
41 clauses have differed, their outcome, including the identification of constitutional
42 breaches, remains across jurisdictions.

43 The elephant in the room is why? Why has it been necessary for citizens and
44 NGOs to engage in lengthy, technical, expensive legal processes to declare laws in

²⁷Sherrylyne Clarke, “Buggery Laws Struck Down by Supreme Court” Nation News (17 December 2022). Available at: <https://www.nationnews.com/2022/12/13/buggery-laws-struck-supreme-court/>

1 breach of fundamental freedoms? Each jurisdiction needing its own constitutional
2 battle between state and citizenry to confirm that which has been common
3 knowledge for decades – criminalising consenting same-sex sexual activity between
4 adults through archaic colonial-era legislation is in breach of constitutionally
5 protected fundamental rights and freedoms.

6 First to consider is whether a constitutional amendment could be tabled, or
7 suggested, to remove savings clauses (nineteen amendments have been made to
8 Barbados's constitution since 1966, including annually from 2018-2021)? Savings
9 clauses were included to ensure orderly transition from colonial rule to
10 independence. Independence occurred over 50 years ago for the majority of
11 Commonwealth Caribbean states – any perceived period of transition is long over.
12 The present-day function of savings clauses appears as facilitator of stagnant, pre-
13 independence law being held in a time warp, in particular when clearly in conflict
14 with the Constitution, burdening future generations to colonial-era legacies and
15 mindsets. Questioning is needed regarding their purpose decades post-
16 independence, and whether if available, it is time to remove them from the
17 Constitution entirely. Doing so, at minimum would ensure the Constitution
18 becomes, as it was intended to be, the supreme law of the land, rather than supreme
19 over law made post-independence, subordinate to that made pre, save for those
20 subject to legal challenge. In addition, the interpretative techniques being employed
21 in cases of clear Constitutional rights breaches are rendering the existence of savings
22 clauses futile, potentially reducing confidence in the legal structure. In the case of
23 the mandatory death penalty in Barbados, again brought by citizens against the state
24 on constitutional breach vs savings clauses, the phrase 'human rights through the
25 back door' became common parlance – the implication being that human rights
26 were being imposed and laws changed through sleight of hand and deception as
27 opposed to in an open and transparent manner. Which segues appropriately into the
28 second question of why Governments have not been proactive with repeal of these
29 patently discriminatory laws? As each domestic court determines the provisions
30 unconstitutional, Governments are exposed to detailed analysis of their
31 discriminatory nature. Armed with this knowledge, which has been framed in
32 Caribbean jurisprudence, interpreted and applied by Caribbean justices with cultural
33 and societal considerations, Governments across the region are still not repealing
34 buggery and serious indecency through the Parliamentary process. Why wait until
35 a Constitutional challenge is mounted, which may or may not pass the savings
36 clause hurdle, leaving the task to the Judiciary? Outside of obvious separation of
37 powers discussions regarding the role of the Executive, this places arguably
38 unreasonable reliance on the citizenry and interested NGOs to call out and fight
39 against that which the state itself is so very aware of, concerning laws which violate
40 basic rights and fundamental freedoms. To note, in 2018, the current administration
41 in Barbados entered power on a 30-0 majority in Parliament, which was retained in
42 2022 and 2026. *Ramirez* presents yet another jurisdiction in the Commonwealth
43 Caribbean relying on the judiciary to mandate change in law as opposed to the
44 Executive.

45
46

1 **What next?**

2
3 The manner in which the offences of buggery and serious have been repealed,
4 through judicial means as opposed to Parliamentary, presents numerous questions
5 for analysis. The overarching questions are what this method tells us about law and
6 its role in the protection of rights, and how is that reconciled with next steps. The
7 repeal of provisions have not been subjected to multiple and detailed analysis by
8 Parliamentarians as to their benefits and detriments, justifications for repeal or
9 retention or consequences of either. The courts, in declaring the criminalising
10 provisions of same-sex sexual activity unconstitutional, results in the repeal of the
11 provision without a natural legislative reform path to follow (aside from the repeal
12 of the offending provisions themselves). As discussed above, these provisions have
13 been embedded not only in Barbadian legislation but national psyche for
14 generations, and their legacy will not, it is humbly suggested, be erased through
15 court judgment alone. Instead, what is needed is a whole-sale review of the
16 legislative structures which held up the provisions, as without significant change to
17 those in addition to the repeal of the provisions themselves, the rights of LGBTQ+
18 persons are guaranteed only with regard the single offending sexual acts.

19
20 *Developing an approach*

21
22 There are multiple approaches which could be adopted for a review of
23 legislative structures, the most direct of which would be a comparative approach,
24 considering legislation available elsewhere and mapping this onto that in force in
25 Barbados. Such an approach would highlight gaps alongside providing alternative
26 relevant legislative frameworks. Law serves to structure society, and are
27 mechanisms through which “policy makers signal what are good values, or what the
28 acceptable norms are (Gileber and Hayashi 2021).”²⁸ However, adopting a
29 universalising approach exploits an (incorrect) assumption of cultural hegemony
30 across nations produced through a reliance on neo-colonial modalities. In their 2002
31 article ‘Re-Orientating Desire: The Gay International and the Arab World’,²⁹
32 Massad considers the approach of universalising in the context of the Arab and
33 Muslim world, discussing the white, neoliberal project of the Global North to
34 ‘rescue’ LGBTQ+ persons in the Global South. They note:

35
36 When the Gay International incites discourse on homosexuality in the non-Western
37 world, it claims that the “liberation” of those it defends lies in the balance. In espousing
38 this liberation project, the Gay International is destroying social and sexual
39 configurations of desire in the interest of reproducing a world in its own image, one
40 wherein its sexual categories and desires are safe from being questioned.

41
42 This approach reproduces a key feature of colonialism - the construction of the
43 ‘Other,’ wherein colonialism divided the world divided into ‘us’ and ‘Others.’

²⁸UNDP National LGBTI Survey: Barbados May 2023, 71

²⁹J Massa ‘Re-Orientating Desire: The Gay International and the Arab World’ Public Culture (2002)
14, 2, 385

1 Colonisers ascribed characteristics to themselves and the ‘Other’ which served to
2 distinguish between them, thereby polarising the two groups. The colonisers shared
3 and possessed certain, standardised traits, as did the colonised. Throughout their
4 seminal text, *Orientalism*, Edward Said contends that colonialism was rooted in a
5 concept of distinction, wherein binary divisions of ‘self’ and Other were used to
6 promote the difference between “the familiar (Europe, the West, us) and the strange
7 (the Orient, the East, them)”.³⁰ As noted by Alpana Roy:

8
9 (t)he term ‘Other’ is a key concept in postcolonial theory. The textual construction of
10 the term ‘Other’ can be traced to the dualistic thought structures of Western
11 epistemologies, where ideas were essentially formed around Hegelian binary
12 oppositions (such as man/woman, positive/negative, white/black, and so on).³¹
13

14 A solely comparative approach which identifies, maps and prioritises white,
15 Western legislative structures being imposed on Caribbean legislative structures
16 would perform the same neo-colonial function as described by Massad, whilst
17 simultaneously implying both hegemony across nations and an ideal in existence to
18 be replicated, representing the colonial construction of the Other and its binarised
19 structures – one legislative structure is correct, and one is incorrect.

20 To avoid doing so, a comprehensive analysis of legislative reform must be
21 analysed through a lens which both recognises and employs the social, cultural,
22 economic and political dynamics of Barbados, positioning any suggestions for
23 reform within its relevant, Barbadian context. This article therefore contends that a
24 robust legislative reform analysis requires a three-step approach. The first is a
25 comparative approach, considering international obligations, domestic legislative
26 provision and a review of comparative legislative frameworks. The second is the
27 development of a theoretical lens which accounts for Barbados’s cultural, political
28 and societal structures. The third is the analysis of the available legislative reform
29 through the lens developed, enabling the production of a robust reform structure
30 which seeks to avoid reproducing colonial structures. This paper will provide an
31 introduction to stages one and two of this approach, producing a synopsis of the
32 current Barbadian legislative structures and identifying potential gaps, before
33 considering the development of a lens through which such openings can be analysed
34 and evaluated.
35
36
37

³⁰E Said, *Orientalism* (Pantheon Books, 1978) 40

³¹A Roy ‘Postcolonial Theory and Law: A Critical Introduction’ (2008) 29 *Adelaide Law* 331

1 **Considering Step 1: Legislative Review**

2
3 The foundation for this legislative review is found in the 2023 National LGBTI
4 Survey: Barbados. As part of a wider project entitled Being LGBTI in the
5 Caribbean, the United Nations Development Programme (UNDP) commissioned
6 the University of the West Indies (UWI), Cave Hill Campus to undertake a National
7 LGBTI Survey for Barbados.³² The survey had two specific aims:

- 8
9 (1) produce knowledge and assess personal costs related to LGBTQI+ people’s
10 experiences of social exclusion, stigma and discrimination; and
11 (2) make useful recommendations that may inform the development and
12 implementation of inclusive public policies.

13
14 Eight areas of research were considered: Citizen Security; Education;
15 Employment; Health; Housing; Violence; Access to Justice; and Political Participation.

16
17 *Current legislative provision*

18
19 Sexual Harassment (Prevention) Act 2017

20
21 Whilst the Act does not explicitly mention gender or sexual orientation, it
22 defines sexual harassment under Section 3 in an inclusive manner, which includes:

- 23
24 (a) the use of sexually suggestive words, comments, jokes, gestures or actions
25 that annoy, alarm or abuse a person;
26 (d) asking a person intrusive questions that are of a sexual nature that pertain to
27 that person’s private life;
28 (g) any other sexually suggestive conduct of an offensive nature in
29 circumstances where a reasonable person would consider the conduct to be
30 offensive.³³

31
32 Employment (Prevention of Discrimination) Act 2020

33
34 The 2020 Act, to be read in conjunction with the 2012 Employment Rights Act,
35 explicitly addresses the issue of employment discrimination and identifies nineteen
36 grounds—including sex, sexual orientation, medical condition, marital status,
37 domestic partnership status and family responsibility—on which to extend
38 protection from direct or indirect and intentional or unintentional acts of
39 discrimination. Whilst it does not recognise ‘gender’, it does recognise sexual
40 orientation. Further, the 2020 Act identifies the family as comprising domestic
41 partners, with the following definitions provided to aid interpretation:

42
43

³²UNDP National LGBTI Survey: Barbados May 2023

³³Sexual Harassment (Prevention) Act 2017

1 “domestic partnership” means the relationship between two persons each at least 18
2 years of age, who live together on a genuine domestic basis but does not include:

3 (a) the relationship between a married couple;

4 (b) a relationship where one of the persons provides the other with domestic support or
5 personal care or both for a fee or reward, and

6
7 “domestic partner” shall be construed accordingly; “domestic partnership status”
8 means the state of being a domestic partner; or the domestic partner or the former
9 domestic partner of a particular individual.³⁴

10
11 *Current social provision*

12
13 The Social Justice Committee

14 In 2019, the Minister of Labour, Social Security and Third Sector introduced a
15 Social Justice Committee, the aim of which was to “consider and make
16 recommendations to Government, directly through the Social Partnership and
17 Cabinet, on social justice issues,” relating to “poverty alleviation; the role of the
18 family in fostering cultural and social norms and values; discrimination; access to
19 education; integration of people with disabilities; access to employment; safety and
20 security and the environment.”³⁵ The Committee comprises of representatives from
21 the LGBTQI+, sex-workers and disability communities, as well as from faith-based
22 institutions (although it currently only has one LGBTQ+ representative).

23
24 The Welcome Stamp

25 In June 2020, Barbados introduced The Barbados Welcome Stamp, which
26 allowed persons who earn a minimum of \$50,000 USD per year to obtain a 12-
27 month visa to live and work remotely. When discussing the stamp and its
28 availability in the Houses of Parliament following its introduction, the Prime Minister
29 stated:

30
31 I want to say that as long as I am prime minister of this nation, we welcome all.
32 Everyone... This country that has been forged regrettably in the bowels of
33 discrimination cannot want to discriminate against anybody for any reason, all must
34 breathe in this world, all must breathe in this country.³⁶

35
36 Political Statements

37 In September 2020, Dame Sandra Mason, the-then Governor General and first
38 President of Barbados made the following statement:

39
40 My government is prepared to recognize a form of civil unions for couples of the same
41 gender so as to ensure that no human being in Barbados will be discriminated against,
42 in exercise of civil rights that ought to be theirs. The settlement of Barbados was birthed

³⁴International Labour Organization, “Barbados”: Available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=110880

³⁵Marlon Madden, “New ‘Social Justice Group’ in Partnership,” Barbados Today (28 March 2022). Available at: <https://barbadostoday.bb/2019/03/28/new-social-justice-group-in-partnership/>

³⁶“Mottley on 12-month Welcome Stamp: ‘We Welcome All, Everyone,’” (21 July 2020). Available at: <https://www.youtube.com/watch?v=HDjxbQxglfI>

1 and fostered in discrimination, but the time has come for us to end discrimination in all
2 forms. I wish to emphasize that my government is not allowing any form of same-sex
3 marriage and will put this matter to a public referendum. My government will accept
4 and be guided by the vote of the public as promised in the manifesto.³⁷
5

6 Prior to Barbados transitioning from a constitutional monarchy to a republic in
7 2022, a Charter of Barbados was drafted, the first article of which states:

8
9 All Barbadians are born free and are equal in human dignity and rights regardless of
10 age, race, ethnicity, faith, class, cultural and educational background, ability, sex,
11 gender or sexual orientation.³⁸
12

13 In discussing the Charter in Parliament, the Prime Minister Mia Mottley stated
14 (although the Charter is not legally binding, it serves (...)):

15
16 ...to ensure that we must never, never, never, never reflect any ounce of discrimination
17 against any human being in this nation if we are to be fair to the battles and to honour
18 the battles fought by our ancestors and if we are to be fair to the precepts of human
19 dignity that we believe in, whether as a nation or spiritually so...³⁹
20

21 *Prospective legislative provision*
22

23 Space in this paper does not permit an extensive analysis of the possible
24 legislative reforms available for consideration, and this will be carried out in later
25 articles. However, an initial review presents a number of possible areas. These
26 include same-sex marriage and civil unions; anti-discrimination legislation;
27 recognition of hate crimes on the basis of gender and sexual orientation; change of
28 legal gender; and same-sex adoption. The ILGA (International Lesbian, Gay,
29 Bisexual, Trans and Intersex Association) extends this review of applicable
30 legislation to include regulation of (so-called) conversion therapy, restrictions on
31 interventions on intersex minors and freedom of expression. The 2022 LGBTI
32 Barbados survey asked respondents about the importance of legislative reform, the
33 following responses were provided:
34
35

³⁷Her Excellency Dame Sandra Mason, GCMG DA QC, “Speech from the Throne,” Barbados Parliament, 15 September 2020. Available at: https://www.barbadosparliament.com/uploads/quick_link/d75dd5f579f78066eafc7d131e15153.pdf

³⁸Sherrylyn Clarke, “The Charter of Barbados,” Nation News (23 November 2021). Available at: <https://www.nationnews.com/2021/11/23/the-charter-of-barbados/>

³⁹Ibid

1 **Figure 1. Importance of Legislation and Reforms, LGBTIO Survey 2022**

2

40

3 The above highlights protection from discrimination and the decriminalisation
 4 of buggery and serious indecency as legislative priorities, alongside marriage
 5 equality and gender identity legislation. The report does not include the questions
 6 asked, so whilst these are highlighted as those receiving 85%+ responses, we are
 7 unsure as to what the original question offered by way of options for consideration.

8

9

Same-sex marriage and partnership recognition

10

11 Same-sex marriage legislation may be specifically drafted to extend marriage
 12 rights to same-sex couples, or exist as amendment to opposite-sex marriage Acts in
 13 existence, for example changing the language to sex-neutral. Partnership
 14 recognition as a legal relationship may be restricted to same-sex couples or be
 15 available for all, and legislation may recognise them as civil partnerships, civil
 16 unions concubinary unions, de facto partnerships and/or cohabitantes. Such
 17 partnership recognition may afford rights equal to marriage, or not. Where rights are
 18 not equal to marriage with regard rights, duties and benefits, partnership unions are
 19 unlikely to be afforded rights in excess of those obtained through marriage. As of
 20 May 2026, neither legal recognition of same-sex unions or a referendum concerning
 21 same-sex marriage has taken place.

21

22 Data as of June 2026 indicates that same-sex marriage has been legalised in 39
 23 countries, including the UK, Canada, Taiwan, the Netherlands, South Africa and
 24 Thailand,⁴¹ whilst same-sex unions have been legalised in several jurisdictions,
 25 including Chile, Greece and Hungary. Same-sex marriage legislation may be
 26 specifically drafted to extend to same-sex couples, or exist as amendment to
 27 opposite-sex marriage Acts, for example changing the language to sex-neutral.
 28 Unions may restricted to same-sex couples or be available for all, and legislation
 29 may recognise them as civil partnerships, civil unions concubinary unions, de facto
 30 partnerships and/or cohabitatee.

30

⁴⁰UNDP National LGBTI Survey: Barbados May 2023

⁴¹See: https://ourworldindata.org/data-insights/more-than-30-countries-have-legalized-same-sex-marriage?utm_source=chatgpt.com

1 Anti-discrimination legislation

2 This appears as priority for LGBTQ+ persons in Barbados, with 95.4% of
3 respondents in the LGBTI Survey in Barbados highlighting this as an area for
4 legislative reform. Legislative anti-discrimination protections can create duties and
5 prohibit conduct for those in public and/or private services. Public services may
6 include the Police, healthcare and public transport, public bodies include local
7 councils or Government departments, and private services include those in the
8 private sector who provide goods and services, such as shops, cinemas and
9 restaurants.

10
11 Hate crimes

12 Hate crime against LGBTQ+ persons may be legislated as a specific offence,
13 where the crime was motivated by the victims real or assumed sexual orientation,
14 gender identity etc, or as an aggravating factor in sentencing, enabling sentence to
15 be increased where the offence was motivated by the victims real or assumed sexual
16 orientation, gender identity etc. Whilst sexual orientation and gender identity are the
17 most common basis for either specific offences or aggravating factors, legislation
18 may include gender expression and/or sex characteristics.⁴² Where hate crimes are
19 recognised as aggravating features, legislation may attach them to specific offences,
20 or enable them to be applicable for all, and may recognise some or all as a basis for
21 aggravation. For example, in Costa Rica, homicide (unlawful killing) committed
22 based on ‘gender expression’, ‘sexual choice’ and ‘gender identity’ aggravates the
23 sentence.⁴³

24 Specific offence legislation is exemplified in S29 Crime and Disorder Act 1998,
25 as amended by S145 Crime and Policing Act 2026 in England and Wales. S145
26 includes hostility related to sexual orientation or transgender identity alongside
27 racial, religious and disability hostility. Any crime can be prosecuted as a hate crime
28 where the offender has:

- 29
30
- 31 • demonstrated hostility based on race, religion, disability, sexual orientation
32 or transgender identity; or
 - 33 • been motivated by hostility based on race, religion, disability, sexual
34 orientation or transgender identity.⁴⁴

35 Where hate crimes exist as aggravating features, this occurs at sentencing,
36 within legislation, regulations or guidelines, enabling the seriousness of an offence
37 to be explicitly aggravated by hostility which is based on, for example, sexual
38 orientation, gender identity etc.

39
40 Change of legal gender

41 Legislation which provides legal procedures for a person to amend their gender
42 identity in identity documents may be available with or without requirements.
43 Where requirements exist, they may include gender affirming surgery, sterilisation,

⁴²See ILGA database: Area One, Hate crime law

⁴³Article 112 Penal Code (1970)

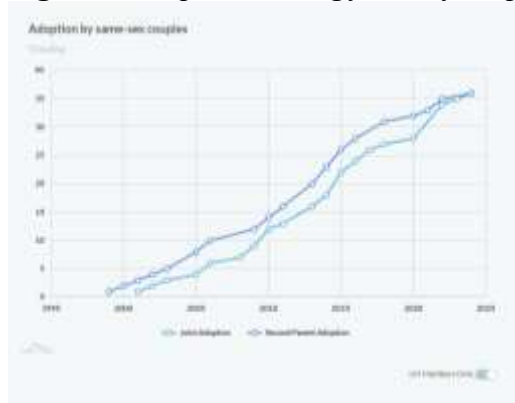
⁴⁴Crown Prosecution, Hate Crime <www.cps.gov.uk>

1 hormone treatment, a medical diagnosis (gender dysphoria, for example) and/or
 2 living in the affirmed gender for a specified period of time. Legislation recognising
 3 a change of legal gender may be an administrative process, without any of the
 4 requirements above, as in Argentina (Gender Identity Law (Law No. 26,743)
 5 (2012)). Legislation may also provide for non-binary recognition, wherein an “X”
 6 is utilised in identity documentation.

8 Same-sex adoption

9 Legislation enabling adoption by same-sex couples may recognise adoption in
 10 two primary forms, as joint adoption and second parent adoption. Joint adoption
 11 legislation may or may not require a formal union (marriage/civil union) with rights
 12 afforded independently or through recognition of the union. For example, in
 13 Estonia, the Law to reform Family Law and other related laws (2023) defined
 14 marriage in gender-neutral terms, legalising marriage equality providing access to
 15 the same rights. In the Netherlands, the Law on Adoption by Persons of the Same-
 16 Sex (Law No 21) does not require marriage or a formal union for joint adoptions.
 17 Second parent adoption, whereby a person adopts the child of their partner, has
 18 historically been the most common form of adoption by same-sex couples:

20 **Figure 2.** *Graph indicating forms of adoption globally by same-sex couples*



21
 22
 23 As with joint adoption, single parent adoption legislation may require
 24 recognition of a formal union, or may contain intentent requirements (for example,
 25 in Switzerland, step-child adoption is permissible for those living in ‘de facto
 26 cohabitation’ under Article 264-c Civil Code). Legislation permitting adopting by
 27 same-sex couples is most prevalent in Europe.⁴⁶

30 **Considering Step 2: Developing a lens**

31
 32 The first stage in the development of a lens through which reform to Barbadian
 33 legislative provision is to be analysed requires the contextualising of Barbados’s

⁴⁵ILGA database: Area One, Adoption by same-sex couples

⁴⁶Ibid – 24 states in Europe permit same-sex adoption, 24 do not.

1 present cultural, societal, economic and social norms within its past structures.
2 These past structures can be divided into four distinct time periods, which will be
3 summarised below. Whilst they may appear selected on governance and political
4 construction and thus formulaic in nature, it is argued that they represent significant
5 changes in Barbadian culture and society which extend far beyond their
6 administrative, chronological appearance. These are enslavement, colonisation,
7 independence and republicanism.

8 9 *Barbados and its History*

10 11 Enslavement

12 Contemporary histories of Barbados begin with its discovery and settlement by
13 the English in 1625, soon after which it became a slave society (as opposed to a
14 society with slaves) with the majority of slaves brought to the island via the Middle
15 Passage from West Africa. Barbados was developed as a large factory, producing
16 the much-desired commodity of sugar to be exported and sold internationally.
17 Enslaved persons were forced to produce sugar, which was exported for sale. In
18 previous research, I have identified five key features aspects of the Barbadian
19 experience of slavery which had a significant impact on contemporary structures of
20 law, politics and national identity (1) economic exploitation; (2) propertisation of
21 people (3) a 'slave culture' characterised by displacement and a non-unified cultural
22 identity; (4) the unique role of religion in both enslavement and postenslavement;
23 and (5) the significance of race during slavery and abolition. These will be expanded
24 upon in future articles in the full development of the lens.

25 26 Colonisation

27 For the purposes of this analysis of Barbadian history, it is deemed necessary
28 to separate Barbados's enslaved history from its colonial history. Enslavement
29 operated from 1627 until abolition in 1833 (1834, 1838).⁴⁷ Following the
30 Emancipation Act, and the abolition of the apprenticeship structure, Barbados
31 remained a colony of the United Kingdom until 1966, when it became an
32 independent state, operating under a constitutional monarchy which retained the
33 British Monarch as Head of State, represented locally by a Governor General. In
34 1954, a ministerial Government was established with Grantley Adams as Premier,
35 and in 1961, Barbados was granted full internal self-government, with Erroll Barrow
36 as Prime Minister.

37 38 Independence

39 Prior to independence, Barbados was a member of The West Indies Federation.
40 The aim of the Federation was to establish a political union between a number of
41 Commonwealth Caribbean islands, serving to remove them as colonies from the
42 United Kingdom but prevent each island going it alone as an independent territory.

⁴⁷1833 is the date of the Emancipation Act, however it did not come into force until 1834, and apprenticeship dictated that freed slaves existed under an un-free structure until 1838 when apprenticeship was abolished. It is for these reasons that this date is not fixed, albeit in law, it appears as 1833.

1 When the Federation collapsed, states within began gaining independence from the
 2 UK, starting with Trinidad and Jamaica in 1962 before Barbados followed in 1966.
 3 Barbados operated as constitutional monarchy from 1966 until 2021. An important
 4 milestone in the development of Caribbean wide jurisprudence came with the
 5 introduction of the Caribbean Court of Justice (CCJ), a regional court situated with
 6 the CARICOM political and economic union, self-described as an integration
 7 movement.⁴⁸ The CARICOM Member States are: Antigua and Barbuda, Bahamas,
 8 Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint
 9 Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname and
 10 Trinidad and Tobago.⁴⁹ The CCJ holds two jurisdictions, original and appellate. The
 11 original is tasked with interpreting the Treaty governing members of CARICOM
 12 and the single market, and the appellate as a final court of appeal to those who cede
 13 to its jurisdiction. Barbados ceded to the CCJ in its appellate jurisdiction in 2005
 14 and was one of the first states to do so. At time of writing, only five CARICOM
 15 members have ceded jurisdiction away from the Judicial Committee of the Privy
 16 Council to the CCJ. In its capacity as a final court of appeal, it has jurisdiction to
 17 hear appeals on criminal and civil matters.

18 Republicanism

19 In 2021, Barbados became a Republic. Under the Constitutional (Amendment)
 20 (No.2) Act 2021, the British sovereign was removed as Head of State and replaced
 21 with a President. Further changes included vesting all property held by the Crown
 22 in the State and amending all references in law from Her Majesty the Queen, the
 23 Crown, and the Sovereign to be read as the State, alongside the removal of “Royal”
 24 from the Barbados Police Force and the Prison.

25 In their article entitled “Why does Barbados symbolic transition to a republic
 26 matter”, Robert Goddard notes “Barbados transition to a republic is merely
 27 symbolic, but for generations of Barbadians, there has been something incongruous
 28 about the symbols and images dominating the spaces around the country. Symbols
 29 matter in the histories of nation-states and this marks the capstone of a much longer
 30 process of decolonisation from Britain.”⁵⁰ The author cites a poll wherein 1/3 of the
 31 Barbadian population supported republicanism, whilst 1/3 were largely neutral.
 32 Concern was expressed over the lack of referenda, a promise made in 2008 but not
 33 fulfilled.⁵¹

34 *Barbados and its Present*

35 The development of a suitable lens necessitates consideration of cultural and
 36 societal norms and ideals created through consideration of both Barbadian past and
 37 present, the effect of which is acknowledged and accepted limitations. Whilst a lens
 38 of the past is developed (inaccurately) through its positioning as something of a
 39 static picture, the present is accepted as unstable and shifting when seeking to
 40
 41

⁴⁸See <https://caricom.org>

⁴⁹See <https://caricom.org/member-states-and-associate-members/>

⁵⁰See <https://blogs.lse.ac.uk/latamcaribbean/2022/01/13/why-barbados-symbolic-republic-matter/>

⁵¹See <https://www.grenadianconnection.com/Grenada/ViewNews.asp?NID=3177&CID=15004&TC=1358&EP=1267&yr=2005&Cat=0000&Sch=>

1 identify of cultural and societal norms. Instead, the lens developed will be an
2 amalgamation of assumptions and theories, contextualised through their position in
3 Barbadian history alongside their continuing position in Barbados today.

4 In 1979, Kamau Brathwaite, a renowned Barbadian poet and academic defined
5 Barbadian culture as:

6
7 “historically influenced life-style and expression, taking into special account the
8 ancestral forces that have contributed to this life-style and expression . . . so that
9 Amerindian, European and African orientations and influences must be taken into
10 account; as must folk forms, colonial patterns, bourgeois-native, radical/ experimental
11 and metropolitan/modern formations.”
12

13 In the 2010 Barbados cultural framework, three aspects of Barbadian cultural
14 heritage were identified:

- 15 1. Language and oral tradition
 - 16 2. Religion
 - 17 3. Natural, archaeological and historical cities and relics.
- 18
19

20 Cultural and societal norms today have been constructed through a fusion
21 which incorporates the historic and continuing influences of, not limited to but
22 including indigeneity, Africanism, enslavement, coloniality and Caribbeanism. As
23 noted by Gilroy:

24
25 The distinctive historical experiences of this diaspora’s (African) population have
26 created a unique body of reflections on modernity and its discontents which is an
27 enduring presence in the cultural and political struggles of their descendants today.⁵²
28

29 The positioning Barbadian norms and customs, cultural and societal at the
30 centre of a legal analysis is not without challenge, in particular, as noted above,
31 owing in part to the fluidity and subjectivity of norms. Variability and flexibility
32 will therefore be essential in its development, both initial and continual.
33

34 *Conceptual markers*

35
36 Following an analysis of the cultural and societal norms of Barbados,
37 conceptual markers will be identified and developed, which will provide the
38 foundational framework from which a theoretical lens will emerge. These
39 conceptual markers will create an academic framework through which prospective
40 laws can be analysed, examined and recommended, amended or dismissed.
41
42

43 **Considering Step 3: Analysing and Examining through the lens**

44
45 In their 2019 chapter ‘LGBT Rights, Sexual Citizenship, and Blacklighting in

⁵²Ibid 45

1 the Anglophone Caribbean: What Do Queers Want, What Does Colonialism Need?',
 2 Grey and Attai address the issue which this article raises in the context of sexual
 3 citizenship in the Anglophone Caribbean. In doing so, they consider how Caribbean
 4 states have been “negotiating and resisting” in ways that resonate with their
 5 communities”⁵³ by drawing on what they have termed ‘moments’ in three
 6 jurisdictions, Guyana, Jamaica and Trinidad and Tobago. Their analysis of these
 7 moments, although distinct from the aim of this article, provide a comparative
 8 framework which too seeks to move away from a neo-colonial, copy and paste of
 9 legal structures from the Global North into the rest of the world, and instead
 10 highlights their identified moments and situates them with a Caribbean specific
 11 narrative of resistance within the LGBTQ+ movements. The development and
 12 subsequent use of a Barbadian specific lens builds on the arguments developed by
 13 Grey and Attai through consideration of how domestic jurisprudence may be
 14 constructed utilising a Barbadian-centred logic, however rather than considering
 15 how challenge *is* occurring, this research will lay focus on how it *could* occur.

18 Conclusion

19
 20 This article has sought to develop a structure under which a legal gap analysis
 21 addressing LGBTQ+ rights in Barbados can take place, following the repeal of the
 22 offences of buggery and serious indecency. It has been argued that, in contrast to
 23 adopting a universalising approach recommendations of legal structures from
 24 elsewhere, a legislative review should take place of available legal structures, before
 25 an analysis of those structures through a Barbadian specific lens. Doing so centres
 26 Barbadian culture and societal norms in the analysis, requiring law to be examined
 27 through identified conceptual markers which reflect a Barbadian reality.

30 References

- 31
 32 Levictus 20:13, detailed in M Kirby, ‘The sodomy offence: England’s least lovely criminal
 33 law export?’ in C Lennox & M Waites (eds.) *Human Rights, Sexual Orientation and*
 34 *Gender Identity in The Commonwealth: Struggles for Decriminalisation and Change*
 35 (School of Advanced Study, University of London, 2013)
 36 Sodomy Statutes (1533-1563) *The Whole Volume of Statutes at Large*, 2 parts (London,
 37 1587), 25 Henry VIII, CH. 6 (1533-1534) 2
 38 An Act Repealing Certain Treasons, Felonies, And Praemunire 1 Mary, CH. 1 (1553)17
 39 P Johnson, ‘Buggery and Parliament, 1533–2017’ *University of York, Parliamentary History*,
 40 Vol. 38, pt. 3 (2019), 325–341, 328
 41 S1 (1) Sexual Offences Act 1967
 42 J Gaskins, C Lennox, M Waites (eds) ‘*Buggery’ and the Commonwealth Caribbean: A*
 43 *Comparative Examination of the Bahamas, Jamaica, and Trinidad and Tobago*,

⁵³Grey, Cornel, and Nikoli A. Attai, 'LGBT Rights, Sexual Citizenship, and Blacklighting in the Anglophone Caribbean: What Do Queers Want, What Does Colonialism Need?', in Michael J. Bosia, Sandra M. McEvoy, and Momin Rahman (eds), *The Oxford Handbook of Global LGBT and Sexual Diversity Politics*, Oxford Handbooks (2020; online edn, Oxford Academic, 8 Jan. 2019),

- 1 *Human rights, Sexual Orientation, and Gender Identity* Human Rights Consortium,
 2 Institute of Commonwealth Studies (School of Advanced Study, University of
 3 London, 2013) 431
- 4 FA Roberts ‘The Maiden Tribute of Modern Babylon’ *Pall-Mall Gazette*, available at:
 5 extension://efaidnbmnibpcjpcglclefindmkaj/https://www.salvationarmy.org.uk/sites/
 6 default/files/resources/2020-10/Pam.R.77%20%27The%20Maiden%20Tribute%
 7 20of%20Modern%20Babylon%27.pdf
- 8 Mr. Macquisten, Hansard, Criminal Law Amendment Bill [Lords] Volume 145: debated on
 9 Thursday 4 August 1921
- 10 J Lawson “Sapphic Sedition”: Lesbians and Law in the 1921 Criminal Law Amendment
 11 Act, *The Law Bod Blog*, June 2025
- 12 Colonel Wedgwood, Hansard, Criminal Law Amendment Bill [Lords] Volume 145:
 13 debated on Thursday 4 August 1921
- 14 Report No. 239/22 Petition 1081 -18, Report on Admissibility- Alexa Hoffmann et al,
 15 Barbados (OEA/Ser.L/V/II Doc. 242 26 September 2022)
- 16 Human Rights Watch, *Hated to Death, Homophobia, Violence, and Jamaica’s HIV/AIDS*
 17 *Epidemic*, November 2004; Human Rights Watch, *Not Safe at Home, Violence and*
 18 *Discrimination against LGBT People in Jamaica*, October 2014
- 19 Human Rights Watch “I have leave to be me: Discriminatory Laws against LGBT People
 20 in the Eastern Caribbean” (March 2018)
- 21 *Pratt v A-G of Jamaica* [1994] 2 AC 1 (JM PC) and *Hughes v R* [2002] 2 LRC 585 (SLU
 22 CA).
- 23 *Jones v Attorney General of Trinidad and Tobago* [2018] CV 2017-02072
- 24 *Holder-McClean-Ramirez et al v Attorney General of Barbados* (2022) 44/220
- 25 S Clarke, “Buggery Laws Struck Down by Supreme Court” *Nation News* (17 December
 26 2022). Available at: [https://www.nationnews.com/2022/12/13/buggery-laws-struck-](https://www.nationnews.com/2022/12/13/buggery-laws-struck-supreme-court/)
 27 [supreme-court/](https://www.nationnews.com/2022/12/13/buggery-laws-struck-supreme-court/)
- 28 *Jamal Jeffers et al v Attorney General of St Christopher and Nevis* Claim No. SKBHCV2021/
 29 0013
- 30 *Orden-David et al v Attorney General of Antigua and Barbuda* [2022] ECSCJ 134
- 31 *Orozo v Attorney General of Belize* Supreme Court of Belize, Claim No. 668 of 2010 / 2011
- 32 UNDP National LGBTI Survey: Barbados May 2023, 71
- 33 J Massa ‘Re-Orientating Desire: The Gay International and the Arab World’ *Public Culture*
 34 (2002) 14, 2, 385
- 35 E Said, *Orientalism* (Pantheon Books, 1978) 40
- 36 A Roy ‘Postcolonial Theory and Law: A Critical Introduction’ (2008) 29 *Adelaide Law* 331
- 37 UNDP National LGBTI Survey: Barbados May 2023
- 38 Sexual Harassment (Prevention) Act 2017
- 39 International Labour Organization, “Barbados”: Available at: [https://www.ilo.org/dyn/](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=110880)
 40 [natlex/natlex4.detail?p_lang=en&p_isn=110880](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=110880)
- 41 Marlon Madden, “New ‘Social Justice Group’ in Partnership,” *Barbados Today* (28 March
 42 2022). Available at: [https://barbadostoday.bb/2019/03/28/new-social-justice-group-](https://barbadostoday.bb/2019/03/28/new-social-justice-group-in-partnership/)
 43 [in-partnership/](https://barbadostoday.bb/2019/03/28/new-social-justice-group-in-partnership/)
- 44 “Mottley on 12-month Welcome Stamp: ‘We Welcome All, Everyone,’” (21 July 2020).
 45 Available at: <https://www.youtube.com/watch?v=HDjxbQxglfI>
- 46 Her Excellency Dame Sandra Mason, GCMG DA QC, “Speech from the Throne,”
 47 Barbados Parliament, 15 September 2020. Available at: [https://www.barbadosparlia-](https://www.barbadosparliament.com/uploads/quick_link/d75dd5f579f78066eaefc7d131e15153.pdf)
 48 [ment.com/uploads/quick_link/d75dd5f579f78066eaefc7d131e15153.pdf](https://www.barbadosparliament.com/uploads/quick_link/d75dd5f579f78066eaefc7d131e15153.pdf)
- 49 S Clarke, “The Charter of Barbados,” *Nation News* (23 November 2021). Available at:
 50 <https://www.nationnews.com/2021/11/23/the-charter-of-barbados/>

- 1 UNDP National LGBTI Survey: Barbados May 2023. See:[https://ourworldindata.org/data-](https://ourworldindata.org/data-insights/more-than-30-countries-have-legalized-same-sex-marriage?utm_source=chatgpt.com)
2 [insights/more-than-30-countries-have-legalized-same-sex-marriage?utm_source=cha](https://ourworldindata.org/data-insights/more-than-30-countries-have-legalized-same-sex-marriage?utm_source=chatgpt.com)
3 [tgpt.com](https://ourworldindata.org/data-insights/more-than-30-countries-have-legalized-same-sex-marriage?utm_source=chatgpt.com)
4 See ILGA database: Area One, Hate crime law
5 Article 112 Penal Code (1970)
6 Crown Prosecution, Hate Crime <www.cps.gov.uk>
7 ILGA database: Area One, Adoption by same-sex couples
8 <https://caricom.org>
9 <https://caricom.org/member-states-and-associate-members/>
10 <https://blogs.lse.ac.uk/latamcaribbean/2022/01/13/why-barbados-symbolic-republic-matter/>
11 <https://www.grenadianconnection.com/Grenada/ViewNews.asp?NID=3177&CID=15004>
12 [&TC=1358&EP=1267&yr=2005&Cat=0000&Sch=](https://www.grenadianconnection.com/Grenada/ViewNews.asp?NID=3177&CID=15004)
13 Grey, Cornel, and Nikoli A. Attai, 'LGBT Rights, Sexual Citizenship, and Blacklighting in
14 the Anglophone Caribbean: What Do Queers Want, What Does Colonialism Need?',
15 in Michael J. Bosia, Sandra M. McEvoy, and Momin Rahman (eds), *The Oxford*
16 *Handbook of Global LGBT and Sexual Diversity Politics*, Oxford Handbooks (2020;
17 online edn, Oxford Academic, 8 Jan. 2019).